Supreme Court, U.S.
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No. ________

In The

Supreme Court of the United States

◆

In re: JOHN PEYTON ALEXANDER, II

◆

PETITION FOR WRIT OF HABEAS CORPUS

◆

JOHN PEYTON ALEXANDER, II
#30021
Unit 15-B
Parchman, MS 38738

175pp

QUESTIONS PRESENTED

1. Does the insanity defense have continued relevance in American law, in light of the creation of an institution known as a "department of corrections"?

2. Is John Peyton Alexander, II, actually innocent of the crime of murder?

   A. As evidenced by the CERTIFICATION OF THE GRAND JURY, invoking the principles of:

      1. Res judicata;

      2. Collateral Estoppel;

      3. Double Jeopardy.

   B. As evidenced by intervening and conflicting opinions in John P. Alexander's parole revocation case, both of which were issued and published by the same court: the Supreme Court of Mississippi:

      1. *Alexander v. State*, 647 So. 2d 693 (Miss. 1994);

      2. *Alexander v. State*, 667 So. 2d 1 (Miss. 1995).

   C. As evidenced by the belated discovery of the audio recording of John P. Alexander's parole revocation hearing, which was withheld and suppressed by attorneys for the State of Mississippi in the court of original jurisdiction.

3. Did the prosecuting attorney commit vacatable error in his acknowledged actions of deliberately delaying John P. Alexander's indictment in order to gain a tactical advantage, and in the related instances of grand jury abuse surrounding these proceedings?

QUESTIONS PRESENTED – Continued

4. Was the Mississippi Department of Corrections (MDOC) successful in bringing about the rehabilitation of John Peyton Alexander, II?
    - A. As evidenced by John P. Alexander's prison record;
    - B. As evidenced by the evaluation of John P. Alexander by the Mississippi Department of Corrections' Medical Director and Staff Psychiatrist.
5. OBITER DICTUM: Since the intent of the Mississippi Legislature in enacting Section 99-13-5, Mississippi Code Ann. (1972), was to protect the privacy of persons of unsound mind: Is John Peyton Alexander, II, able to have sealed retroactively all of the court records relative to this case; and is John P. Alexander able to have his prison, parole and hospital records expunged?

LIST OF PARTIES

John Peyton Alexander, II, is an adult resident citizen of the United States of America who is currently in the custody of the State of Mississippi.

Pursuant to Rule 20.4(b) of this Honorable Court, this habeas corpus proceeding is *ex parte*.

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PETITION FOR WRIT OF HABEAS CORPUS

This is the appeal of the denial by the Supreme Court of Mississippi of a petition for a writ of habeas corpus (App. A-1).

OPINIONS AND ORDERS BELOW

The February 8, 2000, Order by the Hinds County Circuit Court denying my application for release is unreported, and is found in the Appendix (hereafter cited as App.), App. A-7. The June 14, 2000, Order by the Supreme Court of Mississippi denying my petition for a writ of habeas corpus is unreported, and is found in App. A-1. The May 30, 2000, Order by the Supreme Court of Mississippi denying my motion for a CERTIFICATE OF REHABILITATION is found in App. A-8. The July 16, 2001 Order by the Supreme Court of Mississippi, which denies the Mississippi Attorney General's MOTION TO DISMISS, also denies my motion to have my prison and parole records expunged and my motion for a patient's bill of rights, and is found in App. A-9.

The case was deflected to the Court of Appeals for Mississippi, which issued its unpublished opinion dismissing my application for release on February 26, 2002. This opinion is reproduced in App. A-2. The Court of Appeals' April 30, 2002, denial of rehearing is found in App. A-6. The Order by the Supreme Court of Mississippi, entered July 18, 2002, which denies certiorari is found in App. A-11.

The November 24, 1975 CERTIFICATION OF THE GRAND JURY, which declares me as being insane on October 4, 1975, is unreported. This opinion is found in App. C-2. NOTICE of the CERTIFICATION, given by the Hinds County Circuit Court to the Hinds County Chancery Court dated November 25, 1975, is found in App. C-1.

The May 7, 1976, verdict of the petit jury is found in App. D-3. The April 19, 1978, opinion by the Supreme Court of Mississippi, affirming the verdict of the petit jury, is published as *Alexander v. State*, 358 So. 2d 379 (Miss. 1978); and is reproduced at App. D-5.

The March 23, 1992 REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE in my petition for a writ of habeas corpus under 28 USC Section 2254, where the Fifth Amendment argument was first raised, is unreported. This R&R is reproduced at App. E-1. The May 5, 1992, Order by the U.S. District Judge, adopting the R&R is reproduced in App. E-9. The March 8, 1993, opinion by the U.S. Court of Appeals for the Fifth Circuit, which affirms the ruling of the District Court, is unreported, and is reproduced at App. E-10. The April 13, 1993, Order of the Court of Appeals denying rehearing is reproduced at App. E-15.

The December 8, 1994, Opinion by the Supreme Court of Mississippi which finds that my parole was unlawfully revoked due to my mental condition is published as *Alexander v. State*, 647 So. 2d 693 (Miss. 1994). This opinion is reproduced at App. B-1. The November 30, 1995, opinion by the Supreme Court of Mississippi which withdraws 647 So. 2d 693 is published as *Alexander v. State*, 667 So. 2d 1 (Miss. 1995). This opinion is reproduced as App. B-14.

JURISDICTION

The Order by the Supreme Court of Mississippi denying my petition for a writ of habeas corpus is dated June 14, 2000. The case was deflected to the Court of Appeals for the State of Mississippi, which issued its opinion dismissing my application for release on February 26, 2002. The Court of Appeals denied rehearing on April 30, 2002. The Order by the Supreme Court of Mississippi denying certiorari was entered on July 18, 2002. (See App. F-2). (MRAP 17(f))

This Court's jurisdiction is invoked under 28 USC Sections 1257, 2241, 2242, and 1651.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case principally involves the adjudication of an insanity defense on its merits by a grand jury, pursuant to

Sec. 99-13-5, Miss Code Ann. (1972); and the application of the doctrines of *res judicata*, collateral estoppel and double jeopardy protected under Amendments V, XIV to the U.S. Constitution.

I also am arguing that the prosecutor deliberately delayed my indictment in order to gain a tactical advantage and committed other related grand jury abuses in violation of the due process guarantees found in Amendments V, VI, and XIV to the U.S. Constitution.

I am also arguing, *obiter dictum*, that the intent of the Mississippi Legislature in enacting Sec. 99-13-5, Miss. Code Ann. (1972), was to protect the privacy of persons of unsound mind as guaranteed by Amendments IX and XIV to the U.S. Constitution. This argument is prompted by the repeated telecasts of a made-for-television movie, BETWEEN LOVE AND HATE, whose screenplay was adapted form the transcripts of the trial before the petit jury, which was the second jury to consider the case.

I am also arguing that the Mississippi Legislature states its intent to rehabilitate prisoners by and through the Mississippi Corrections Act of 1976. Sections 47-5-1, *et seq.*, Miss. Code Ann. (Supp. 1976)

I am also arguing that the Supreme Court of Mississippi denied my petition for a writ of habeas corpus (App. A-1) contrary to Article I, Section 9, Paragraph 2 of the U.S. Constitution.

Article I, Section 9, paragraph 2 of the U.S. Constitution is set forth in App. F-1. Amendment V to the U.S. Constitution is set forth in App. F-1. Amendment VI to the U.S. Constitution is set forth in App. F-1. Amendment IX to the U.S. Constitution is set forth in App. F-2. Amendment XIV to the U.S. Constitution is set forth in App. F-2. Sec. 99-13-5, Miss. Code Ann. (1972) is set forth in App. F-3. Sections 47-5-1, *et seq.*, Miss. Code Ann. (Supp. 1976) are set forth by reference.

STATEMENT OF THE CASE

My presence in the judicial system arises out of a homicide which occurred on October 4, 1975, involving a situation where I was sexually abused as a teenager by an adult named Mrs. Robinson, who was almost twice my age. Prior to that time, I was both an honor student and a varsity athlete at a prestigious Southern university. As of the date of this petition, I have been in Parchman prison for a total of 23 years. I have been continually in state custody since 1975.

Mississippi has a statutory provision, Sec. 99-13-5, Miss. Code Ann. (1972), which allows a grand jury to issue verdicts in insanity defenses (App. F-3). The November 1975 term of the Hinds County Grand Jury investigated the case, and issued its CERTIFICATION OF THE GRAND JURY (App. C-2), which finds that I was insane at the time of the homicide; the CERTIFICATION further finds that I was not criminally responsible for my actions on October 4, 1975.

NOTICE (App. C-1) of the CERTIFICATION was given to the Hinds County Chancery Court; and I was sent to the Mississippi State (mental) Hospital at Whitfield on a civil commitment: for treatment and not for evaluation.

The CERTIFICATION OF THE GRAND JURY was politically unpopular. When asked why he consented to the case being resolved in this manner, Hinds County District Attorney Ed Peters responded in a statement to a newspaper reporter that he was deliberately delaying my indictment in order to gain a tactical advantage. Mr. Peters stated that he intended to use against me any statements I made to the doctors at Whitfield in a possible future trial (App. H-1).

As a result of these public statements by Mr. Peters, my attorneys advised me not to talk to the doctors at the Mississippi State (mental) Hospital (App. H-4).

Acting without statutory authority, the chancery court discharged me from the hospital, solely because I exercised my right to remain silent; and I was indicted (App. D-1) and brought before the petit jury, which convicted me of murder (App. D-3). I was sentenced to life imprisonment.

The Mississippi Correction Act, Sections. 47-5-1, *et seq.*, Miss Code Ann. (Supp. 1976), became law shortly after the verdict of the petit jury; and after the opinion in my direct appeal, *Alexander v. State*, 358 So. 2d 379 (Miss. 1978) (App. D-5), I opted to receive treatment in the newly formed "Department of Corrections," rather than to continue to challenge my conviction in the courts.

I was paroled in 1984; and, in 1986, my father had my parole revoked: only after he was unable to obtain the assistance of the chancery courts. Dad pressed simple assault charges against me in order to get me into treatment; but he told the parole board at my revocation hearing that I was not guilty of the simple act he had charged me of (App. G-12). After my parole was revoked, Dad dropped the charges which were pending in ***de novo*** proceedings.

The Supreme Court of Mississippi ruled that my parole was unlawfully revoked, *Alexander v. State*, 647 So. 2d 693 (Miss. 1994) (App. B-1). However, this, too, was a politically unpopular opinion; and the Supreme Court of Mississippi withdrew its unanimous opinion on rehearing, *Alexander v. State*, 667 So. 2d (Miss. 1995) (App. B-14).

The petition for rehearing filed by the Mississippi Attorney General was based on evidence which previously had been withheld and suppressed by attorneys for the Mississippi State Parole Board in the court of original jurisdiction, but which suddenly was handed over without explanation upon Order by the Supreme Court of Mississippi during the appellate stage of the proceedings which challenged the lawfulness of the revocation of my parole.

This evidence is a transcript of my October 1986 parole revocation hearing (App. G-1).

These intervening court decisions and this compelling transcript demonstrate that I lacked the mental capacity to make the homicide a murder.

Aggrieved by another-in-a-series of conflicting rulings by the Mississippi courts in my case, I began a letter-writing campaign petitioning this Honorable Court for redress.

The Clerk of this Court informed me that, in order for the Court to agree to hear the case, I first had to receive denial orders from the courts of the State of Mississippi.

On March 2, 1999, pursuant to these instructions from the Clerk of this Court, I filed an "application for release" in the Circuit Court of Hinds County, Mississippi. This application for release was allowed to remain dormant in the state circuit court for a period of one year, before it was denied (App. A-7). I then filed a Notice of Appeal to the Supreme Court of Mississippi.

In a subsequent Motion for a Clemency Resolution and a COR, I asked the Supreme Court of the Mississippi to issue me a CERTIFICATE OF REHABILITATION; and then to give NOTICE to the Governor of Mississippi of the history of conflicting rulings in the case, with a resolution recommending that the case be resolved by way of Executive Clemency.

In an ORDER, dated May 30, 2000, Supreme Court Justice Kay B. Cobb ruled that I may raise my issues in the appeal of the application for release (App. A-8).

I then filed in the Supreme Court of Mississippi a Petition for a Writ of Habeas Corpus; and I asked that I be given a hearing where I would be allowed to confront my accusers with the benefit of rules of evidence. In an ORDER, dated June 14, 2000, Supreme Court Justice C. R. McRae denied my Petition for Writ of Habeas Corpus on its merits (App. A-1).

The case then proceeded in an unusual way. The Supreme Court of Mississippi summarily denied a group of my motions (App. A-9): one of which asked that my prison and parole records be expunged; another of which asked for a patient's bill of rights. In the same ORDER, a three-judge panel denied the Mississippi Attorney General's MOTION TO DISMISS (App. A-9).

The case was later deflected to the Court of Appeals for the State of Mississippi which after a total of three years in the Mississippi courts, dismissed my "application for release" (App. A-2). The Court of Appeals then denied rehearing (App. A-6). On July 18, 2002, the Supreme

Court of Mississippi entered an ORDER denying certiorari (App. A-11).

From this denial of the Petition for Writ of Habeas Corpus by the Mississippi Supreme Court (App. A-1) and from the dismissal by the Mississippi Court of Appeals of my application for release (App. A-2, A-6) and from the subsequent denial of certiorari by the Mississippi Supreme Court (App. A-11), I hereby file my appeal to the Supreme Court of the United States.

REASONS FOR GRANTING THE WRIT: SUMMARY OF THE ARGUMENT

This is the appeal of the denial by the Supreme Court of Mississippi of a petition for a writ of habeas corpus (App. A-1).

On three separate occasions in the history of this case, the Mississippi courts have issued opinions favorable to me; and, on all three occasions, these opinions were overruled, nullified and/or withdrawn. (See pp. 26-27).

The Hinds County Grand Jury was the first tribunal to issue a ruling in the case; and this jury found that I was insane at the time of the homicide. See CERTIFICATION OF THE GRAND JURY (App. C-2).

I am arguing that the CERTIFICATION OF THE GRAND JURY reflects my actual innocence of the crime of murder, and that any further prosecution should have been barred by the legal principles of ***res judicata***, collateral estoppel and double jeopardy.

I am arguing that prosecutorial misconduct occurred by the deliberate delay of my indictment in order to gain a tactical advantage and in related occurrences of grand jury abuse.

I am putting forward the fact that I received top-quality treatment and rehabilitation in the Mississippi Department of Corrections; and I am asking this Court to issue me a CERTIFICATE OF REHABILITATION.

Since the intent of the Mississippi Legislature in allowing a grand jury to issue verdicts in insanity defenses, Sec. 99-13-5, Miss. Code Ann. (1972), was to protect the privacy of persons of unsound mind: I am asking this Honorable Court *obiter dictum* to seal all my court records and to expunge my prison, parole and hospital records.

Statement Regarding The Relevance Of The Insanity Defense

Initially, the insanity defense was used in my case as a legal tool which would allow me to be placed in an environment where I would have opportunities for treatment and rehabilitation.

At first, my attorneys, the members of my family and I believed that, among the choices available, the best environment for me to attain that goal would be the Mississippi State (mental) Hospital at Whitfield.

I was sent to Whitfield after the issuance of the CERTIFICATION OF THE GRAND JURY, and again after the verdict of the second (petit) jury while awaiting the ruling in the direct appeal to the Supreme Court of Mississippi. *Alexander v. State*, 358 So. 2d 379 (Miss. 1978).

The Mississippi Corrections Act was passed in 1976, Sections 47-5-1, *et seq.*, Miss Code Ann. (Supp. 1976). This created many opportunities for rehabilitation; and, after both of my parents had taken a tour of the Mississippi State Penitentiary at Parchman, a decision was made to have me transferred to Parchman rather than my remaining at Whitfield until a ruling in the direct appeal of the petit jury verdict.

All of the psychiatrists and psychologists agree that I have a diagnosable mental condition. I was given several different diagnoses, but the one which has endured is manic/depression. I have been under continuous psychiatric treatment since 1975, and I take powerful anti-psychotic medication.

I had a religious conversion a few years after my arrest; and, at that time, the insanity defense seemed to me to contradict my belief that, as a Christian, I am personally responsible for my actions.

One provision of American law is that people who are preoccupied with religion, or with sex, are sometimes excused from criminal responsibility for illegal acts by reason of insanity.

There is also a canonical provision in Church law which allows for a person to be declared "not responsible" for certain actions under certain circumstances.

In light of recent advances in the fields of psychiatry and psychology and in light of the relatively recent establishment of the field of "corrections", this Honorable Court may wish to update its holding on the legal defense of insanity. To my knowledge, this Court has not, at any time in the recent past, revisited the concept of the continued relevance of the insanity defense. Therefore, this case has a potentially broader scope than the question of my physical freedom.

Some people really are not criminally responsible for their actions; some people utilize the insanity defense as a plea for mercy and forgiveness, based on grounds recognized by equity and justice. In my case, the grand jury believed the former; and the petit jury believed the latter.

My legal position is that the CERTIFICATION OF THE GRAND JURY states that I was insane on October 4, 1975; and this is a lawfully rendered, legally binding holding based on statutory authority. Sec. 99-13-5, Miss. Code Ann. (1972). I assert that this CERTIFICATION was a ruling on the merits of my insanity defense, not a ruling on my competency to stand trial.

I am arguing that, after this CERTIFICATION was issued, I was then barred from further prosecution by the principles of ***res judicata***, collateral estoppel and double jeopardy.

Res Judicata

As in *U.S. v. Cejas*, 817 F. 2d 595, 596 (1987), this case principally involves the assertion of a Fifth Amendment double jeopardy defense, and the application of the doctrines of *res judicata* and collateral estoppel in a criminal case.

Res judicata and collateral estoppel are "embodied in the Fifth Amendment guarantee against double jeopardy." *Ashe v. Swenson*, 397 U.S. 436, 445, 90 S. Ct 1189, 1195, 25 L. Ed. 2d 469 (1970). The doctrines of *res judicata* and collateral estoppel apply to criminal as well as to civil proceedings, *Cejas, supra*. In *Cejas*, the U.S. Court of Appeals for the Ninth Circuit found that the dismissal of an indictment on the merits precludes trial on reindictment for the same charge.

In the instant case, the Hinds County Grand Jury issued its CERTIFICATION OF THE GRAND JURY, which finds, as a matter of fact and as a matter of law, that, on October 4, 1975, I lacked the mental capacity to commit murder (App. C-1, C-2).

I was later indicted, tried and convicted of murder before a petit jury for the same action for which the grand jury previously had certified me as being insane (App. D-1, D-3).

It is my assertion that the record in my case demonstrates that there was a lack of grounds for an indictment on a charge of murder, and, thus, this finding by the grand jury was an adjudication on the merits of my insanity claims; and I further assert that this adjudication by the grand jury was *res judicata* as to any further proceedings. This finding by the Hinds County Grand Jury, I now argue, precluded the State of Mississippi from trying me for the same charge under a later indictment.

The Court of Appeals states in *Cejas*:

> Normally, the dismissal of an indictment has no preclusive effect on further proceedings because the usual reason is faulty procedure or technical defects in the wording of the indictment that can

> be cured by reindictment. A dismissal of an indictment on the merits, however, precludes a trial on a reindictment for the same charge.

817 F. 2nd at 600.

The Court of Appeals also states:

> In most instances, the application of either doctrine has been after a jury verdict. Here we are concerned with the effect of the dismissal of an indictment, and the issue is whether that was a final decision on the merits that bars further prosecution.

Id., at 598.

It is my assertion that the CERTIFICATION OF THE GRAND JURY was a ruling, based on statutory authority, Sec. 99-13-5, Miss. Code Ann. (1972), on the merits of my insanity defense; and thus, as in *Cejas*, *supra*, further prosecution on the same charge was barred.

Collateral Estoppel

While the officials at the highest levels of a government are sovereign, and thus enjoy an independence or prerogative, it is prudent to recognize that the gifts and the entitlements of the rule-of-law are irrevocable.

In American law, we have the principle of collateral estoppel. This concept invokes a legal bar which prevents a person from asserting a claim or fact which is inconsistent with a position that the person previously has taken.

On November 24, 1975, the grand jury convened in the First Judicial District of Hinds County, Mississippi, issued a CERTIFICATION OF THE GRAND JURY, which finds, as a matter of fact and a matter of law, that I lacked the mental capacity to commit murder (App. C-1, C-2).

Hinds County District Attorney Ed Peters affixed his signature to this CERTIFICATION OF THE GRAND JURY (App. C-3). Some six months later, in May of 1976, in a public trial before a petit jury, Mr. Peters took a contrary legal position (App. D-2, D-3): his official signature notwithstanding, Mr. Peters argued before a petit jury that I was not insane.

The test of time has uncovered many convincing proofs that I actually did lack the mental capacity to commit murder; and it is my present argument before this Court that, once he affixes his signature to an official legal document, Ed Peters, or any other government official, must be bound by the legal documents to which he affixes his signature. This is a practical necessity in order for the decisions of government officials to be honored, obeyed and respected. The need for the soundness and integrity of our official government decisions requires this.

This Court defines collateral estoppel as one aspect of the Fifth Amendment double jeopardy clause, requiring "that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *De La Rosa v. Lynaugh*, 817 F. 2d 259 (5th Cir. 1987); quoting *Ashe v. Swenson*, *supra*.

By the witness of his signature, it is evident that Ed Peters was a party to the grand jury proceedings which issued the CERTIFICATION OF THE GRAND JURY. Mr. Peters took one legal position in the grand jury room (App. C-3), and a totally different position in my indictment (App. D-2), and in the courtroom during the trial before the petit jury (App. D-3).

The *De La Rosa* case is a proceeding involving collateral estoppel where the defendant's state of mind is at issue. The Court of Appeals for the Fifth Circuit states that "a collateral estoppel attack requires this court to make a realistic and practical inquiry . . . to determine what issues that jury necessarily found in reaching its verdict." *De La Rosa*, at 261.

My legal position is that the CERTIFICATION OF THE GRAND JURY was the first decision issued by any court or tribunal in my case; that this decision is legally binding; and that this decision is a true assessment of the facts and circumstances of the case.

Double Jeopardy

The Fifth Amendment to the U.S. Constitution provides that no person shall be subject for the same offense to be twice put in jeopardy. This amendment was applied to the states by this Court in its holding in *Benton v. Maryland*, 89 S. Ct. 2056, 395 U.S. 784, 23 L. Ed. 2d 707 (1969).

Through a unique provision of statutory law, Miss. Code Ann. Section 99-13-5 (1972), a grand jury has the authority to decide questions of insanity in the jurisdiction of the State of Mississippi.

In my case, the CERTIFICATION OF THE GRAND JURY was made, which finds that I did not have the mental capacity to make my actions of October 4, 1975, a murder (App. C-1, C-2).

The grand jury did not find a true bill against me due to my insanity; and the Hinds County Circuit Court gave NOTICE (App. C-1) to the Hinds County Chancery Court of such insanity for the purposes of having the chancery court proceed with me according to the law pertaining to persons of unsound mind. The grand jury recommended that I remain in the Jackson city jail until such time as these chancery court proceedings could begin (App. C-3).

The CERTIFICATION OF THE GRAND JURY was issued on November 24, 1975; but NOTICE was not given to the chancery court until November 25, 1975 (App. C-1, C-3). Thus I spent one day in a jail cell as a result of the CERTIFICATION OF THE GRAND JURY. It is my assertion that jeopardy attached at that time.

The United States Court of Appeals for Florida has held that:

> For purposes of prohibition against double jeopardy a court proceeding which may result in incarceration places a person, adult or juvenile, in jeopardy. *Fain v. Duff*, 488 F. 2d 218, 220, 225, (Fla. 1973). See also, *U.S. v. Dickerson*, 168 F. Supp. 899 (D.D.C. 1958), rev'd on other grounds (1959).

After the CERTIFICATION OF THE GRAND JURY was issued, Ed Peters stated publicly that he consented to the grand jury proceedings because he was deliberately delaying my indictment in order to gain the tactical advantage of being able to use against me any statements which I might make to the doctors at the Mississippi State (mental) Hospital, should I ever come to trial (App. H-2).

As a result of these public statements, my attorneys advised me not to talk to any psychiatrists or any of the staff members at the hospital (App. H-4); and the Mississippi State Hospital petitioned the chancery court to discharge me from that institution. As a result of my exercising my right to remain silent, I was discharged by the chancery court without statutory authority, and I was returned to pre-trail detention in the Jackson city jail: where I was housed until I could be indicted, tried and convicted of murder (App. D-1, D-3).

In 1975, I was a minor according to Mississippi law; and I assert that jeopardy attached, by and through the CERTIFICATION OF THE GRAND JURY.

Statement Regarding The Parole Revocation Challenge

From 1991 to 1995, I followed the constitutionally prescribed forms for settling legal disputes before the Mississippi courts relative to the question of the unlawful revocation of my parole due to my mental condition. The Supreme Court of Mississippi properly decided the question of the unlawful revocation of my parole, by and through the first opinion it issued in the case, *Alexander v. State*, 647 So. 2d 693 (Miss. 1994) (App. B-1).

This opinion was politically unpopular, so the Mississippi Attorney General personally filed a petition for rehearing based on evidence which had continually been in the possession of the Mississippi State Parole Board at the time of the hearing of the case by the Sunflower County Circuit Court: which was the court of original jurisdiction. Despite the fact that my attorney specifically requested this evidence in the lower court, the transcript of my parole revocation hearing was withheld and suppressed by the prison's Staff Attorney until the Supreme Court of Mississippi ordered that it be handed over during the appellate stage of the proceedings before the Mississippi Supreme Court.

Neither my attorney nor I ever were given access to the audio recording of my parole revocation hearing: we had to rely on a prison employee to transcribe the audio cassette tape.

The transcription of the audio recording, which was relied upon so heavily in the revocation of my parole, was of such poor quality that it did not identify any of the people present at the parole revocation hearing. The participants, with a few inconsistent exceptions, were referred to as "man's voice" and "woman's voice" (App. G-1).

This transcript of testimony, given by persons identified as "man's voice" and "woman's voice" (App. G-1), was used by the Supreme Court of Mississippi to justify the withdrawal of the original, unanimous opinion in 647 So. 2d 693. This opinion was superseded by a second opinion, published as *Alexander v. State*, 667 So. 2d 1 (Miss. 1995) (App. B-14).

However, this transcript sheds new light on the assertion that I was "not responsible" by reason of insanity for my actions of October 4, 1975.

In the nature of its review, this Honorable Court decides questions involving conflicting rulings between the various jurisdictions within the United States judicial system. In the instant case, there is a set of conflicting rulings issued by the same court: the Supreme Court of Mississippi. See, *Alexander v. State*, 647 So. 2d 693 (Miss. 1994) and *Alexander v. State*, 667 So. 2d 1 (Miss. 1995) (App. B-1 and B-14).

On the basis of these conflicting rulings, I am asking the Supreme Court of the United States to exercise its supervisory powers over the Supreme Court of Mississippi, and to intervene in order to decide the question of my insanity on October 4, 1975, which also is the subject of other conflicting rulings which have been issued by Mississippi courts in this case. (See pp. 26-27).

Prosecutorial Misconduct

I assert that Hinds County District Attorney Ed Peters' strategy of deliberately delaying my indictment in order to gain a tactical advantage against me, and the related occurrences of grand jury abuse which followed this strategy, amount to gross prosecutorial misconduct, which is of the degree that my May 7, 1976 murder conviction and life sentence should be set aside and vacated.

This Honorable Court has held that a prosecutor cannot deliberately delay the indictment of an accused in order to gain a tactical advantage. *U.S. v. Marion*, 404 U.S. 307 (1971); *U.S. v. Gouveia*, 467 U.S. 180 (1984).

Although he did not achieve the tactical advantage he had hoped for, I assert that Mr. Peters committed enormous grand jury abuse in his actions related to this delay of my indictment.

The November 1975 term of the Hinds County Grand Jury heard testimony from several psychiatrists and a psychologist; and, on the basis of this medical testimony, the grand jury made a determination that I was "not responsible" by reason of insanity. As DA, Mr. Peters made this grand jury presentation: he decided which witnesses to call. Additionally, Ed Peters signed his name to the CERTIFICATION (App. C-3).

This no true bill by the grand jury did not decide that the evidence was insufficient to find that a crime may have been committed. Instead, the grand jury decided that I was not criminally responsible for my actions. Furthermore, a grand jury in Mississippi is given the authority to make these findings by a specific statute, Section 99-13-5, Miss. Code Ann. (1972).

The grand jury finding of "not responsible" by reason of insanity was relied upon by the chancery court to order an immediate civil commitment to the state mental hospital. I further assert that this grand jury finding was a formal, final adjudication on the merits of my insanity defense: it was not a ruling on my competency to stand trial. (See *Jackson v. Indiana*, 406 U.S. 715 (1972)).

Furthermore, I was sent to the state hospital for treatment: I was not sent there for a pre-trail evaluation; and there was no statutory authority for my discharge from the hospital. I was discharged from treatment for exercising my right to remain silent in the face of the DA's public comments that he would use against me any statements which I might have made to the doctors at the state mental hospital (App. H-2).

My attorneys learned of the DA's strategy by reading a newspaper article (App. H-1); and they advised me not to talk to any of the doctors at the hospital (App. H-4). I followed their advice!

My attorneys' desire to shield me from self-incrimination was an early assertion of the legal principle which this Court adopted in *Estelle v. Smith*, 451 U.S. 454 (1981). Although he did not achieve the tactical advantage he had sought, Mr. Peters then re-presented the case to a subsequent grand jury.

I assert that the original grand jury finding was *res judicata* of my insanity defense; and this finding, I assert, distinguishes my case from other cases where multiple grand jury presentations are permitted at common law.

These events transpired in 1975 and 1976. Since that time, many jurisdictions have enacted laws which require that, after a grand jury has returned a no true bill, a prosecutor is required to obtain court permission in order to re-present a case against an accused to a subsequent grand jury.

In the indictment before the second grand jury and in the trial before the petit jury, the prosecutor and the court paid no attention whatsoever to the very important finding of insanity by the original grand jury. They treated it as if it never happened!

I assert that the related circumstances surrounding the original grand jury finding of "not responsible" by reason of insanity; my subsequent commitment to a state mental hospital for treatment; my discharge from the hospital into pre-trial detention by the chancery court, which acted without statutory authority; and the unconstitutional presentation before the second grand jury, which re-presentation omitted the very mental health evidence on which I had previously been found "not responsible": all of this violated my due process rights in such a gross manner as to warrant that my conviction before the petit jury and accompanying life sentence should be set aside and vacated!

Statement Regarding "Restorative Justice" And A CERTIFICATE OF REHABILITATION

My maternal grandfather served in the U.S. Military during World War I. After the Allies defeated Germany, our foreign policy was to treat the former enemy in a harsh manner. This harsh treatment was followed by the rise to power of a man like Hitler, and my father served in the United States Navy during World War II.

After World War II, the Allied nations made a decision to invest money and other resources into rebuilding programs for the Axis nations. This approach of taking our former enemies, who had been soundly and utterly defeated, and giving them economic and other assistance, was a tremendous success; so in the decade of the 1970s, the United States government and the legislatures of the states created an institution known as a "department of corrections."

The creation of the field of "corrections" was an outgrowth of the success of the Marshall Plan. I was convicted by the second jury during the same year as the passage of the Mississippi Corrections Act. I chose to forbear my legal challenges at the time; and I am one of the first people ever to go through a "department of corrections." The theory of "corrections" is a radical and revolutionary concept. To my knowledge, there is no precedent for this in human history. The next revolutionary concept to emerge is the theory of "restorative justice."

In 1978, I was brought before another jury to answer charges of "wrongful death." The Supreme Court of Mississippi had just upheld my conviction before the petit jury

(App. D-5); and I had to make a decision about how to answer this civil suit. I chose to confess my wrongdoing. Since that time, I have tried to do everything in my power to make it up to the people I hurt.

I was my own worst critic for many years; and up until the year 1990, I was full of self-contempt. In that year, I realized that the best way that I could benefit everybody involved would be for me to take control of the life I have and to use it to its full potential.

Since coming to prison, I have utilized the opportunities for self-improvement which are so abundant at Parchman prison. I attended vocational school; I played the piano in the Parchman Band, and thereby was a member of a group of roving ambassadors for the newly-formed Mississippi Department of Corrections (MDOC); I worked as an administrative clerk in a sensitive security/management area; I went through a process of spiritual formation and education for ministry; I received the Associate of Arts degree through the prison college program; and I have used my musical skills to play the piano for church groups and for tour groups who visit the prison.

I believe that I am a success story in the field of corrections; and I would like this Honorable Court to recognize such by issuing me a CERTIFICATE OF REHABILITATION.

A CERTIFICATE OF REHABILITATION is a writ authorized by 28 USC Sec. 1651. I am unaware of any specific common law precedent for this; and I am unaware of any other statutory authority for this: aside from the fact that the Mississippi Legislature states its intent to rehabilitate prisoners, by and through the Mississippi Corrections Act. Sec. 47-5-1, *et seq.*, Miss. Code Ann. (Supp. 1976).

However, it stands to reason that, since I was certified as being insane by the Hinds County Grand Jury, a CERTIFICATE OF REHABILITATION is an appropriate request for me to make: now that, as I assert, the Mississippi Department of Corrections has succeeded in bringing about my rehabilitation; and now that I am asking to be released from the custody of the State of Mississippi.

Prison Record

While serving time at the Mississippi State Penitentiary at Parchman, I have found favor with the keepers of the prison.

In December of 1978, I was assigned to trusty status ("A" Custody) by the MDOC classification committee, and thereby assigned to participate in the Parchman Band, which was a musical show band that played a variety of styles of contemporary music. It also became a public relations tool for the newly formed Mississippi Department of Corrections. The band played for festivals and municipal celebrations held across the State of Mississippi, as well as playing for government officials, and for campaign activities during election years. During the time-period when the Mississippi Legislature was in session every year, we often would perform shows in the Jackson area for the solons several times a week. I also made frequent road trips to the cities of Jackson and Meridian in order to pick up purchases of musical equipment at music stores and factory outlets.

As a member of the Parchman Band, I traveled extensively all over the State of Mississippi; and once I was even authorized by the Governor of Mississippi to travel to Memphis, Tennessee.

My friends and family members would visit me while I was on these band trips. My mother visited me regularly, and I met my wife for the first time while on a band trip. Up until the time of his death, my father would regularly come to band performances and visit me.

I was a member of the Parchman Band before I made parole. When I was returned on parole revocation, I played in the Parchman Band for another eight calendar years.

It is my assertion that the classification committee gave me the assignment to the Parchman Band because the members of the MDOC staff believe that I am not dangerous to myself or to others.

In 1994, Mr. Cannon, the long-time band director, expressed an intent to retire, so I took a job at the prison laundry, where I worked as a stock room clerk for six years (App. J-8).

In the year 2000, I was recruited to work at the Welcome Center at Parchman. This Welcome Center stands on Guard Row, immediately to the right side after entering the penitentiary's front gate. This front gate is on U.S. Highway 49 West. This Welcome Center is similar to the welcome centers found along the highways at the Mississippi state line. This is a sensitive placement assignment and is a position of trust (App. J-5). The various tour groups visiting the penitentiary come first to the Welcome Center. These groups consist mainly of middle school and high school children. I played piano for these tour groups; and for a time, I gave motivational speeches to the children. However, when I notified the Commissioner of Corrections that I felt uncomfortable being "on display," I was reassigned; and I now am working as a janitor at a trusty camp.

In addition to my job with the Parchman Band, and my jobs with the laundry and at the Welcome Center, I worked as an administrative clerk in a sensitive security/management area: the Training Department. Here I was exposed to information regarding security operations within the MDOC.

It is my assertion that the classification committee gave me the above "sensitive placement" assignments because the MDOC staff members believe that I am not a danger to anyone.

In addition to my classification in "sensitive placement," I was granted a 3-day furlough to attend my sister's wedding in Jackson; and I was granted two 10-day Christmas leaves to spend the holidays with my family. The policy of Christmas leaves is now abolished at the prison.

In 1978 when the band director, Mr. Cannon, placed me in the Parchman Band, one of the first things which he told me was, "John, when we make you a trusty, we are putting a lot of confidence in you; and we expect you to live up to this confidence."

I have been a trusty now for almost 22 calendar years. I believe I have lived up to the confidence which has been placed in me; and I believe the next logical step in my rehabilitation plan is for me to be given a CERTIFICATE OF REHABILITATION and to be released to free society.

I believe that I am a success story in the field of "corrections!"

Medical Evaluation

When I came to Parchman in 1977, there were approximately 2,000 prisoners in the entire system. There was a stigma associated with prisoners who received psychiatric treatment; so not many people took advantage of the quality care which was available. This situation enhanced my opportunities for individualized treatment.

Over the years, I have been under the care of some excellent psychiatrists. They have given me top-quality treatment, and they have had to be authoritarian with me only on rare occasions.

Dr. Robert Ritter placed me on psychotropic medication and recommended me for participation in the Parchman Band program shortly after I arrived at Parchman. Dr. Giovanni Croce helped me tremendously during the beginning of a 12-year period of time in which I was experiencing profound and genuine grief and remorse over my actions of October 4, 1975. Dr. Stanley C. Russell helped me to realize that, after a suitable time of grief and remorse over my past mistakes, I needed to accept what had happened: and thereby find the ability to go forward with the rest of my life.

Sometime between the year 1986, when my parole was revoked, and the year 1990, medical science produced a means to take Haldol, the psychopharmacological medication which had been continuously prescribed for me since 1980, and suspend the drug in sesame oil, place the mixture in a syringe, and then inject it into a patient's muscles. This produces a timed-release effect, which keeps effective levels of the drug in the human bloodstream for 28 days.

In 1990, Dr. Russell placed me on injectable medication. I decided to begin the injections in order to give assurances to members of my family, to members of society, and to the staff members at Parchman, of my commitment to follow my medical treatment program.

According to my understanding of the science, instead of a Haldol tablet going into my stomach, and then being sent to my liver (as was the case with the oral administration of the drug), the injectable medication is released, bit by bit, directly into my bloodstream; and thus, there is less likelihood of negative effects to my liver.

These negative effects to my liver: the jaundiced pallor which showed forth on my complexion; and the feelings of fatigue and lethargy which I experienced for many years as a constant reality, were the main drawbacks to the medication therapy.

The benefit of the injectable medication is that, when I began taking it, my mood shifted from a controlled state of "depression" to a controlled state of "joy." (These are medical terms used in the diagnosis of manic/depression).

The physicians have monitored the levels of my liver enzymes over the years; and the enzyme levels are only mildly elevated from the normal ranges (App. J-3).

Another effect of the injectable medication is that there are procedures available to be set into place which can guarantee the ability to monitor my medication-delivery schedule.

The injectable medication induces in me a general sense of well-being which is independent of external circumstances. This sense of well-being has been sustained over the last 12 calendar years. I also now have a great deal of energy; so I currently take my medication because I want to take it.

In addition to medication therapy, the corrections personnel (ranging from therapists, to security personnel, to clergy, to educators) have reinforced to me the importance of healthy lifestyle habits.

In my current life situation, I pray about two hours a day; I work about two hours a day; I study about two hours a day; I jog two miles a day, five days a week; I watch television or listen to the radio about two hours a day; I eat healthful foods; and I get proper amounts of rest. Every day, I talk on the telephone, either to my wife or to my mother. My wife comes to visit me for four-day visits at the family visiting apartments, three or four times a year.

I take advantage of the opportunity to attend Mass, which is held three Saturdays a month at the Parchman Spiritual Life Center. I am a member of a renewal movement in the Christian Church known as KAIROS, which emphasizes prayer-and-share groupings.

The State of Mississippi has provided me with opportunities for quality rehabilitation. The fact that I was able to receive better care in Parchman than I would have been able to receive at the Mississippi State Hospital located at Whitfield was a major factor in my decision, at one period of time, not to pursue any more legal challenges to my conviction and life sentence.

According to the way that I understand the insanity argument, enriched with my parents' insights and perspectives: the jurists of Western Civilization decided several centuries ago that society will treat insane lawbreakers in a more humane and compassionate manner than it will treat other people who break the same laws. With the creation of a "department of corrections" in the 1970s, American society extended rehabilitation opportunities to all lawbreakers.

In my rehabilitation history, Dr. Ritter recommended me for participation in the Parchman Band program. This entailed extensive travel, in and among the general public, all over the State of Mississippi. Dr. Croce recommended me for continued participation in the band, as well as for other positions of trust and responsibility. Dr. Russell also wrote a letter of evaluation, which is supportive of my release. This letter is found in App. J-1.

It is my strong assertion and unwavering belief that I am a success story in the field of Corrections. I would like this Honorable Court to recognize this fact by issuing me a CERTIFICATE OF REHABILITATION.

Obiter Dictum: Right To Privacy

My present arguments before this Court are that my criminal case originally was resolved through secret and confidential grand jury proceedings. It is my legal position that, when it enacted Sec. 99-13-5, Miss. Code Ann. (1972), the Mississippi Legislature intended to protect the privacy and confidentiality of persons of unsound mind who commit illegal acts: thereby shielding them from public humiliation by providing an avenue whereby insanity claims may be resolved quietly and discretely in confidential and secret grand jury proceedings.

My original attorneys sought to protect my privacy by utilizing Sec. 99-13-5; but their efforts were thwarted by the grand jury abuse of the Hinds County District Attorney.

Our humiliation is exacerbated by the repeated telecasts of a made-for-television movie, which is based on the trial transcripts of the proceedings before the petit jury.

I would not even include this privacy question in the instant petition were it not for the continued and repeated telecasts of this movie, entitled BETWEEN LOVE AND HATE, on a cable channel.

The right to privacy is a retained right, protected by Amendment IX and Amendment XIV to the U.S. Constitution.

If the Court accepts my arguments that the CERTIFICATION OF THE GRAND JURY is ***res judicata*** of my insanity defense; and that after this CERTIFICATION was issued, I was then barred by the Fifth Amendment to the U.S. Constitution from a subsequent trial before the petit jury; then I would seek also to argue that I am entitled to have sealed retroactively all of the various court records in the history of my case, and I am entitled to have my prison, parole and hospital records expunged in order to protect my family and myself from the violation of my privacy.

I have provided a list of cause numbers and court cases which I ask to be included in any order to seal court records. (App. K-1).

Statement Regarding Further Resort To The Mississippi Courts As Being Ineffective To Protect My Rights

The Mississippi courts have issued three rulings in the history of this case which were favorable to me:

1. The CERTIFICATION OF THE GRAND JURY (App. C-2), with NOTICE (App. C-1), finding in favor of my insanity defense.
2. *Alexander v. State*, 647 So. 2d 693 (Miss. 1994) (App. B-1), finding that my parole was unlawfully revoked, due to my mental condition.
3. An ORDER dated May 20, 2000, by the Supreme Court Justice Kay B. Cobb allowing me to raise my issues in the appeal of my "application for release" (App. A-8).

Each of these favorable rulings either has been overruled, withdrawn or nullified:

1. The verdict of the petit jury (App. D-3), and *Alexander v. State*, 358 So. 2d 379 (Miss. 1978) (App. D-5), overruled the CERTIFICATION OF THE GRAND JURY.
2. *Alexander v. State*, 667 So. 2d 1 (Miss. 1995) (App. B-14), withdrew 647 So. 2d 693 (App. B-1).
3. The ORDER, dated June 14, 2000 (App. A-1), by the Supreme Court Justice C. R. McRae,

which denied my petition for a writ of habeas corpus; and the dismissal by the Mississippi Court of Appeals of my "application for release" (App. A-2, A-6): both nullified Justice Cobb's May 20, 2000, ORDER (App. A-8).

In each instance of favorable rulings, the respective judge or jury attempted, in good faith, to do what is right; but, in each instance, they were unable to sustain the political backlash of the impartial application of the law to the facts and circumstances of the case.

I do not believe that the overruling, withdrawal or nullification of these opinions which had been favorable to me was in any way caused by my behavior or attitudes subsequent to the favorable rulings. The only behavior I exhibited during the aftermath of the public backlash following two of these rulings (App. C-2 and App. B-1) was to exercise my right to remain silent.

For whatever reasons, I do not believe that the Mississippi courts have dealt fairly and honorably with me; and I believe, as a U.S. citizen, I am entitled to expect that court opinions favorable to me should be honored, obeyed and respected. And they have not been (App. I)!

For these reasons, I believe that any further resort to the Mississippi courts will be ineffective to protect my rights. I further assert that this history of conflicting rulings by the Mississippi courts constitutes exceptional circumstances which warrant the exercise of this Court's discretionary and supervisory powers.

Statement Regarding Relief Not Being Attainable In Any Other Court

In 1991, acting ***pro se***, I filed a petition for a writ of habeas corpus under 28 USC Sec. 2254, in the United States District Court for the Southern District of Mississippi, Jackson Division. The Fifth Amendment argument was first raised at this time. In answer to this Sec. 2254 petition, the State of Mississippi waived the requirement that I exhaust state remedies (App. E-5).

The U.S. Magistrate Judge then recommended a ruling which states that I waived or forfeited my rights both to state and federal collateral review (App. E-7); and the REPORT AND RECOMMENDATION was adopted by the U.S. District Judge (App. E-9).

The case was appealed to the United States Court of Appeals for the Fifth Circuit; which states that it was mindful of my claims, but dubious of my assertions that, in the history of my case, the Mississippi judges have allowed me to be "tried in the papers" (App. E-13). The Court of Appeals denied my petition for rehearing (App. E-15).

I have been denied relief by the Hinds County Circuit Court (App. A-7); I have been denied relief by the Mississippi Court of Appeals (App. A-2, A-6); the Supreme Court of Mississippi has issued several conflicting rulings in the case (App. A-1 conflicts with App. A-8; App. A-11 conflicts with App. A-8, A-9; App. B-1 conflicts with App. B-14); I have been denied relief by the U.S. District Court (App. E-1, E-9); and I have been denied relief by the U.S. Court of Appeals for the Fifth Circuit (App. E-10; E-15).

If this Honorable Court does not agree to hear the case, then I effectively will be denied any avenue of post-conviction relief; and I believe that, in the face of the history of conflicting rulings in the case, plenary collateral review by a court of law is warranted at this stage of the proceedings.

If the Justices of this Court do not salvage the rule of law in this case, then I fear our nation's cherished liberties will not be realized by yet another generation of Mississippians.

Statements Regarding The Writ As Aiding The Appellate Jurisdiction Of The Court

This is the direct appeal of the denial by the Supreme Court of Mississippi of my petition for a writ of habeas corpus (App. A-1). Additionally, as a matter of appellate review, there have been numerous conflicting rulings issued by the Mississippi courts in this case. (See pp. 26-27).

The CERTIFICATION OF THE GRAND JURY (App. C-2), and its NOTICE (App. C-1) conflict with a later indictment (App. D-1), petit jury verdict (App. D-3), and opinion of the Supreme Court of Mississippi, *Alexander v. State*, 358 So. 2d 379 (Miss. 1978) (App. D-5).

I am now arguing my actual innocence of the crime of murder; and I am asking this Honorable Court to reverse, overrule, set aside, and vacate the opinion by the Supreme Court of Mississippi published in 358 So. 2d 379 (App. D-5).

Also, the original opinion by the Supreme Court of Mississippi in my parole revocation case (App. B-1) conflicts with a subsequent opinion (App. B-14) which withdrew the initial opinion. I offer this as evidence of indecisiveness and miscarriage.

The Court also has the opportunity, if it so chooses, to revisit the question of the relevance of the insanity defense, in light of the creation of an institution known as a "department of corrections": which extends treatment and rehabilitation opportunities to all lawbreakers.

Requested Relief

I hereby humbly ask this Honorable Court to issue a writ of habeas corpus in order to bring my body before the Court, so that I may present evidence, call witnesses, and confront my accusers.

I am asking this Court to enter an order setting aside and vacating my May 7, 1976, conviction before the petit jury and life sentence; due to the CERTIFICATION OF THE GRAND JURY being *res judicata* as to my actual innocence of the crime of murder.

As a result of this order (if granted) as to *res judicata*, I am asking the Court to issue writs, *obiter dictum*, to the various courts who have issued orders and opinions in the case subsequent to the CERTIFICATION OF THE GRAND JURY, ordering these courts to seal the records of the numbered causes listed in App. K-1. I am asking that the sealing of these records apply retroactively.

I am asking the Court to issue writs, *obiter dictum*, to: the Mississippi Department of Corrections, ordering that agency expunge all of my prison records; the Mississippi State Parole Board, ordering that agency to expunge all my parole records; the Mississippi State Hospital at Whitfield, ordering that institution to expunge all of the hospital records compiled relative to my incarceration there from May 12, 1976 to July 28, 1977, while I was a convicted felon.

I am asking the Court to issue an order releasing me from the custody of the State of Mississippi.

I am asking the Court to issue a writ granting me a patient's bill of rights, relative to any follow-up medical treatment plan which this Court may set up for me, subsequent to my release from the custody of the State of Mississippi.

I am asking the Court to issue me a CERTIFICATE OF REHABILITATION.

I am asking that if the Justices will not grant habeas corpus relief, the Court transfer the case to an appropriate lower court with a direct order that the case be given plenary collateral review.

I am asking the Court for any other relief which the Justices may deem appropriate under the facts and circumstances of the case.

CONCLUSION

In the history of this case, there are three sets of conflicting rulings by the Mississippi courts. (See pp. 26-27).

These conflicting rulings, I assert, are examples of the departure from the accepted and usual course of judicial proceedings which call for an exercise of this Court's discretionary and supervisory powers.

For the foregoing reasons, I ask the Supreme Court of the United States to issue a writ of habeas corpus in order to review my application for release.

This is the 15 day of October, 2002

Respectfully submitted,

JOHN PEYTON ALEXANDER, II
#30021
Unit 15-B
Parchman, MS 38738

APPENDIX A

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2000-TS-00278

JOHN PEYTON ALEXANDER Appellant

v.

STATE OF MISSISSIPPI Appellee

ORDER

(Filed Jun. 15, 2000)

This matter comes before the undersigned Justice on the Petition for a Writ of Habeas Corpus filed by John Peyton Alexander. Alexander is appealing the Hinds County Circuit Court's denial of his Application for Release from the Custody of the State of Mississippi. Alexander asks this Court to issue a writ of habeas corpus and hold a hearing on the legality of his detention by the Mississippi Department of Corrections. After due consideration the undersigned Justice finds that Alexander may raise his issues concerning his detention and release in this appeal. The Petition for a Writ of Habeas Corpus should be denied.

IT IS THEREFORE ORDERED that the Petition for a Writ of Habeas Corpus filed by John Peyton Alexander be and the same is hereby denied.

SO ORDERED, this, the 14th day of June, 2000.

/s/ C. R. McRae
CHUCK McRAE, JUSTICE

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

Betty W. Sephton	*(Street Address)*
Post Office Box 249	450 High Street
Jackson, Mississippi	Jackson, Mississippi
39205-0249	39201-1082
Telephone: (601) 359-3694	e-mail:
Facsimile: (601) 359-2407	sctclerk@mssc.state.ms.us

February 26, 2002

This is to advise you that the Mississippi Court of Appeals rendered the following decision on the 26th day of February, 2002.

Court of Appeals Case #2000-CP-00278-COA
Trial Court Case #0-261
John Peyton Alexander, II v. State of Mississippi

The judgment of the Circuit Court of Hinds County is reversed and the application for release is dismissed. Appellant taxed with costs of appeal.

NOTICE TO CHANCERY/CIRCUIT/ COUNTY COURT CLERKS

If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2000-CP-00278-COA

JOHN PEYTON ALEXANDER, II **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

DATE OF TRIAL COURT JUDGMENT:	02/08/2000
TRIAL JUDGE:	HON. L. BRELAND HILBURN
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	PRO SE
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: DEIRDRE MCCRORY
DISTRICT ATTORNEY:	FAYE PETERSON
NATURE OF THE CASE:	CIVIL – POST CONVICTION RELIEF
TRIAL COURT DISPOSITION:	APPLICATION FOR RELEASE DENIED
DISPOSITION:	REVERSED AND DISMISSED-02/26/2002
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	

BEFORE SOUTHWICK, P.J., LEE, AND CHANDLER, JJ.

SOUTH WICK, P.J., FOR THE COURT:

¶1. Department of Corrections inmate John Peyton Alexander filed an application for release with the Circuit Court of Hinds County. The application was denied. Alexander appeals arguing that he has been rehabilitated and should be released. We find that this was effectively a motion for post-conviction relief and that it was procedurally defective in several respects.

STATEMENT OF FACTS

¶2. John Peyton Alexander was convicted of a murder. That conviction was affirmed by the Mississippi Supreme Court in 1978. *Alexander v. State,* 358 So.2d 379, 387 (Miss. 1978); *see also* BETWEEN LOVE AND HATE (1993 ABC television movie dramatizing this murder). Alexander was paroled in 1984 but was returned to prison after his parole was revoked in 1986. The parole revocation was ultimately upheld. *Alexander v. State,* 667 So.2d 1, 6 (Miss. 1995).

¶3. On March 2, 1999, Alexander sent a one-page letter to the Circuit Court of Hinds County and requested that the court vacate both his conviction and his life sentence. On February 8, 2000, the circuit court denied the application. Alexander's appeal has been deflected here.

DISCUSSION

¶4. No matter what an inmate labels his pleadings, post-conviction relief proceedings are governed by a specific set of statutes. Miss. Code Ann. §§ 99-39-1 to 99-39-29 (Rev. 2000). Among the requirements is a set that applies to a prisoner whose conviction has been affirmed on direct appeal. In such cases, a motion must first be filed with the Supreme Court seeking leave to file a motion for post-conviction relief with the trial court. Miss. Code Ann. §§ 99-39-7 & 99-39-27 (Rev. 2000).

¶5. Issues arising from Alexander's original conviction and from his revocation of parole have both been addressed by the Mississippi Supreme Court. In order for the circuit court to have jurisdiction to hear new matters, it must be granted authority by the Supreme Court.

¶6. As the circuit court did not have jurisdiction to consider Alexander's motion, we reverse the judgment since it ruled on the merits and order that the motion instead be dismissed.

¶7. **THE JUDGMENT OF THE CIRCUIT COURT OF HINDS COUNTY IS REVERSED AND THE APPLICATION FOR RELEASE IS DISMISSED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

McMILLIN, C.J., KING, P.J., BRIDGES, THOMAS, LEE, IRVING, MYERS, CHANDLER AND BRANTLEY, JJ., CONCUR.

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

Betty W. Sephton
Post Office Box 249
Jackson, Mississippi
39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi
39201-1082
e-mail:
sctclerk@mssc.state.ms.us

April 30, 2002

This is to advise you that the Mississippi Court of Appeals rendered the following decision on the 30th day of April, 2002.

Court of Appeals Case #2000-CP-00278-COA
Trial Court Case #0-261
John Peyton Alexander, II v. State of Mississippi

Appellant's motion for rehearing is denied.

NOTICE TO CHANCERY/CIRCUIT/ COUNTY COURT CLERKS

If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

MINUTES CIRCUIT COURT, 1ST DISTRICT,
HINDS COUNTY Jan TERM, 19 ___ 2000

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

IN RE: JOHN PEYTON ALEXANDER, II

CAUSE NO. 0-261

ORDER

This cause having come on to be heard on Petitioner, John Peyton Alexander, II's Application for Release from the Custody of the State of Mississippi. This Court having reviewed Petitioner's Application for Release and considered the arguments set forth in said application, finds that the Petitioner's Application for Release should be **DENIED**.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the said Application for Release be and the same is hereby **DENIED.**

SO ORDERED AND ADJUDGED this the 8 day of February, 2000.

/s/ L. Breland Hilburn
L. BRELAND HILBURN
CIRCUIT JUDGE

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2000-TS-00278

JOHN PEYTON ALEXANDER Appellant

v.

STATE OF MISSISSIPPI Appellee

ORDER

(Filed May 31, 2000)

This matter comes before the undersigned Justice on the Motion for a Clemency Resolution and a COR filed by John Peyton Alexander. Alexander is appealing the Hinds County Circuit Court's denial of his Application for Release from the Custody of the State of Mississippi. Alexander asks this Court to issue a Certificate of Rehabilitation and recommend to the Governor that Alexander be granted clemency. After due consideration the undersigned Justice finds that Alexander may raise his issues concerning his release in this appeal. The Motion for a Clemency Resolution and a COR should be denied.

IT IS THEREFORE ORDERED that the Motion for a Clemency Resolution and a COR filed by John Peyton Alexander be and the same is hereby denied.

SO ORDERED, this the 30th day of May, 2000.

/s/ Kay B. Cobb
KAY B. COBB, JUSTICE

IN THE SUPREME COURT OF MISSISSIPPI

No. 2000-CP-00278

JOHN PEYTON ALEXANDER Appellant

v.

STATE OF MISSISSIPPI Appellee

ORDER

(Filed Jul. 18, 2001)

This matter came before a panel of this Court consisting of Pittman, C.J., Cobb and Easley, JJ., on the Motion to Dismiss appeal filed by the State of Mississippi and the Motion Requesting Additional Relief, Motion to Recover Legal Fees and Motion for Patient's Bill of Rights filed by John Peyton Alexander. The State asks that this appeal be dismissed because the Hinds County Circuit Court had no jurisdiction to rule on Alexander's request for relief. After due consideration the panel finds that Motion to Dismiss Appeal is not well taken and should be denied. The panel further finds that Alexander's motions are not well taken and should be denied.

IT IS THEREFORE ORDERED that the Motion to Dismiss Appeal filed by the State of Mississippi be and the same is hereby denied.

IT IS FURTHER ORDERED that the Motion Requesting Additional Relief filed by John Peyton Alexander be and the same is hereby denied.

IT IS FURTHER ORDERED that the Motion to Recover Legal Fees filed by John Peyton Alexander be and the same is hereby denied.

IT IS FURTHER ORDERED that the Motion for Patient's Bill of Rights filed by John Peyton Alexander be and the same is hereby denied.

SO ORDERED, this the 16 day of July, 2001.

/s/ C.D. Easley, Jr.
CHARLES D. EASLEY, JR.,
JUSTICE

Serial: 96976

IN THE SUPREME COURT OF MISSISSIPPI

No. 2000-CT-00278-SCT

JOHN PEYTON ALEXANDER, II

v.

STATE OF MISSISSIPPI

ORDER

(Filed Jul. 18, 2002)

This matter is before the Court on the Petition for a Writ of Certiorari filed by John Peyton Alexander, II. After consideration the Court finds that the petition should be denied.

IT IS THEREFORE ORDERED that the Petition for a Writ of Certiorari filed by John Peyton Alexander, II, be and hereby is denied.

SO ORDERED, this the 2nd day of July, 2002.

/s/ William L. Waller, Jr.
WILLIAM L. WALLER,
JR., JUSTICE FOR THE
COURT

TO DENY: ALL JUSTICES.

647 So.2d 693

APPENDIX B

Supreme Court of Mississippi.

John P. ALEXANDER

v.

STATE of Mississippi, Carmen Gettis Castilla and Mississippi State Parole Board.

No. 92-KA-00010.

Dec. 8, 1994.

Dan R. Wise, C. Stevens Seale, Hattiesburg, for appellant.

Michael C. Moore, Atty. Gen., Deirdre McCrory, Sp. Asst. Atty. Gen., Jackson, for appellees.

Before HAWKINS, C.J., and PITTMAN and BANKS, JJ.

PITTMAN, Justice, for the Court:

STATEMENT OF THE CASE

In 1978, Alexander was convicted of murder in the Circuit Court of Hinds County and ordered to serve a life sentence in the custody of the Mississippi Department of Corrections. This Court subsequently affirmed the conviction and sentence in *Alexander v. State,* 358 So.2d 379 (Miss.1978). Alexander was paroled in August of 1984.

On September 23, 1986, Alexander was arrested and charged with simple assault. He was convicted of that charge on September 26, 1986, in the Forrest County Justice Court. Alexander was returned to Parchman prison on October 3, 1986. After being duly noticed, Alexander was given a parole revocation hearing on October 27, 1986. Alexander received from the Board a notice concerning this hearing, which stated in part:

> The Parole Board shall have the authority to continue, revoke or modify your Parole. The allegations against you are:
>
> violation of condition # 5: you were arrested, charged and found guilty of simple assault; (5) I will live and remain at liberty without violating the law.

Alexander's parole was revoked by Order dated October 27, 1986. On November 3, 1986, Alexander perfected an appeal of the simple assault conviction to the Forrest County Court. The county court thereafter on August 4, 1987, entered an Order dismissing the simple assault charges.

In January of 1991, Alexander filed a Writ of Habeas Corpus in the Circuit Court of Sunflower County, challenging the revocation of his parole. Alexander received notice for a hearing on the Motion, signed by Magistrate Betty W. Sanders and a hearing was held on April 24, 1991. After considering all the evidence, the circuit court denied Alexander's petition. Alexander thereafter filed a motion for reconsideration. This motion was also denied by the lower court.

Aggrieved by the lower court's dismissal of his claim, Alexander filed notice of appeal to this Court and assigns the following as error committed by the lower court:

I. THE LOWER COURT ERRED IN DISMISSING WITH PREJUDICE ALEXANDER'S MOTION FOR POST-CONVICTION RELIEF

II. THE LOWER COURT ERRED IN HOLDING THAT ALEXANDER'S PETITION WAS TIME-BARRED UNDER § 99-39-5 (Supp.1993)

LAW

While Alexander labeled his original petition as a Writ of Habeas Corpus, this appeal is perfected pursuant to the Mississippi Uniform Post-Conviction Collateral Relief Act, codified in Miss.Code Ann. § 99-39-1 et. seq. (Supp.1993).

By Order of this Court, dated April 14, 1994, the record for the case *sub judice* was supplemented by Judge Howard Q. Davis' subsequent order as follows:

> The information received in response to those requests reflect that on September 20, 1986, James Peyton Alexander, father of the petitioner in this cause, made affidavit before the clerk of Forrest County Justice Court that petitioner had committed an assault upon him and petitioner's sister by making threats of bodily harm and that Mr. Alexander considered 'John dangerous to his family and himself.' The Justice Court found him guilty on *September 26, 1986.* On *October 27, 1986,* Mr. Alexander's parole was ordered revoked. On *November 3, 1986,* an appeal was perfected to the County Court of Forrest County. There was no transcript made of any proceedings in the County Court, but that Court, by Order dated August 4, 1987, dismissed the cause on Mr. Alexander's motion to which the County Prosecuting Attorney did not object. The Motion to Dismiss was filed on July 24, 1987; that Motion was based upon an Affidavit of the father who

> stated that he filed the Justice Court action 'in order to get him medical assistance and get his antidepressant medications regulated when I was unable to receive assistance from the Chancery Court of Forrest County, . . . ' He stated that he was 'now no longer willing to testify in the case for the prosecution.'
>
> The record of the parole board hearing reflects that petitioner admitted to the charge of simple assault and that he had earlier been paroled, in large part, due to his mother's assurances to the Parole Board that she would see that he took his medicine.

Alexander filed a response to this Court's remand for supplementation, stating there was neither a transcript of the county court proceedings nor a record of Alexander's parole revocation hearing.

Notwithstanding Alexander's assertion, a transcript of the parole revocation hearing was indeed forwarded to this Court pursuant to the April 14, 1994 Order.[1]

During the course of the parole revocation hearing held on October 27, 1986, it was determined that Alexander had discontinued certain medications sometime prior to his father bringing the simple assault charges in Forrest County Justice Court in September, 1986. An unidentified woman commented at the hearing that "[t]his was a justice court conviction. The time for his appeal has not elapsed and he has signed an appeal bond today to appeal that conviction to the county court." She further stated that she "would like to have John released to have some treatment rather than have his parole revoked." In addition, Alexander's parole officer believed he was doing very well and faithfully reported in. There was a great deal of discussion about Alexander ceasing to take his medication and whether this action was approved by his treating physicians.

---

[1] The transcript does not list the members or persons present.

The chairman presiding at this hearing stated:

> As you know, we've discussed this case and . . . it is a hard case. In our discussion, it is our opinion that we are going to revoke John for one (1) year and request that Dr. Whellan put him under his supervision and . . . and whatever Dr. Whellan sees fit and that would be perfectly alright with the board and we will request a report from Dr. Whellan when John comes back before us next time.

The same unidentified woman at the hearing also stated that she thought that "Mr. Alexander was concerned to make clear to this board that he took this action in filing the simple assault charge as a preventative measure that he was not concerned to have John charged with the assault charge."

The Parole Board revoked Alexander's parole in October, 1986. Alexander, in turn, filed for post-conviction relief, which was denied by the circuit court in 1991. This appeal has followed.

LAW

I. WHETHER THE LOWER COURT ERRED IN DISMISSING WITH PREJUDICE ALEXANDER'S MOTION FOR POST-CONVICTION RELIEF?

Alexander, in both his petition to the circuit court and his direct appeal to this Court, argues that his parole was unlawfully revoked due to the fact that the county court ultimately dismissed the charges which originally resulted in the justice court conviction. Alexander questions the validity of the justice court conviction and argues that the county court's subsequent action of dismissing the charges serves to nullify the earlier justice court conviction. This argument centers on the fact that the county court conducts a *de novo* review. In part Alexander relies on §§ 11-51-81 through 11-51-91 of the Mississippi Code of 1972. These sections provide the framework for appeals in and from the lower courts. However, nothing in these statutes specifically supports Alexander's assertions and arguments. In addition, Alexander cites *Moore v. Ruth,* 556 So.2d 1059, 1062 (Miss.1990), for the proposition that "where a parolee is subsequently acquitted or found not guilty of a felony for which parole has been revoked, this State must prove facts and circumstances, apart from an arrest, charge or conviction, which warrant revocation of parole."

The State counters this argument by relying on the fact that Alexander failed to sustain his requisite burden of factually showing that the revocation of his parole was predicated exclusively on his justice court conviction. *Moore v. State,* 587 So.2d 1193, 1197 (Miss.1991).

This Court's holdings in the *Moore v. State* and *Moore v. Ruth* cases are applicable to the case *sub judice*. In *Moore v. Ruth,* 556 So.2d 1059 (Miss.1990), this Court discussed the applicable standard for revocation of parole:

> Moore has been *granted parole,* and the heart of his complaint is that the State impermissibly revoked his parole. On revocation, the State's authority is much narrower, for before one released on parole may be returned to custody, it must be shown that he has violated the terms and conditions of parole. Miss.Code Ann. § 47-7-27 (Supp.1989). Obviously, commission of a felony while on parole is grounds for revocation, [citation omitted], nor is it necessary that parole authorities await the principal trial before commencing proceedings to have the parole revoked. None of this carries us far where, as here, the parolee is found not guilty of the principal charge which formed the basis of the order of revocation. [emphasis in original].

Moore v. Ruth, 556 So.2d at 1061.

From the record, it appears that the Parole Board hearing, conducted to determine whether to revoke Alexander's parole, centered around if and when Alexander ceased taking his prescribed medication. In addition, there is little discussion of the actual violation of condition five (5) of his parole agreement. Moreover, Alexander's father by affidavit stated that he would not testify in the prosecution of this charge and he only filed the charge "in order to get him medical assistance and get his antidepressant medications regulated when I was unable to receive assistance from the Chancery Court of Forrest County. . . . " We find such evidence does not comport with the law set forth in *Moore v. Ruth,* which requires a showing "that he has violated the terms and conditions of his parole." *Id.* at 1061.

Condition five required that Alexander "live and remain at liberty without violating the law." Whether or not Alexander's parole was lawfully revoked turns on whether there was a sufficient showing that Alexander violated this condition. The county court's subsequent action of dismissing the charges, coupled with the record of the hearing, and affidavit of Alexander's father, support the notion that the revocation was improper as it pertained to the conviction obtained in justice court and later appealed to and dismissed by the county court.

Based on the record and supplemental documents, it appears that the Board relied solely on Alexander's justice court conviction as a violation of condition five of the parole agreement. Mr. Mailly, the chief investigator for the Parole Board, testified that he was not employed by the Board in 1986, and therefore, had no knowledge of whether that document pertaining to Alexander's justice court conviction was considered in revoking his parole. Further, Mailly did not know what evidence was considered by the Board before revoking Alexander's parole.

In the case *sub judice,* the record of the hearing points to the conviction in justice court, and the State produced nothing further. In *Moore v. Ruth,* 556 So.2d at 1062, this Court said: "[t]he acquittal on the criminal charge means at the very least that, before the accused's parole may be revoked, the State must offer actual proof that he committed an act violating the terms and conditions of his parole, and the mere fact that he was arrested and charged with rape may hardly suffice."

Further, in *Moore v. State,* 587 So.2d 1193 (Miss.1991), we stated that "[b]efore one released on parole may be returned to custody, it must be shown that he has violated the terms and conditions of parole. Miss.Code Ann. § 47-7-27 (Supp.1989)." *Id.* at 1196.

While both the parole revocation hearing and hearing on Alexander's post-conviction motion were indeed held to consider Alexander's claims, the record indicates that: 1) Alexander's parole was actually revoked because of his mental state and condition; and 2) Alexander's post-conviction motion was actually denied by the circuit court because of the conviction obtained in justice court yet later dismissed by the county court. Therefore, this Court presently has nothing before it concerning Alexander's mental condition, other than a reference to the earlier placement of Alexander under the supervision of a doctor for further report to the parole board.

In the case *sub judice,* clearly there was a conviction at the justice court level, which distinguishes it from the "acquittal" category set forth in *Moore.* However, the State offered no actual proof that Alexander violated the terms and conditions of his parole other than the justice court conviction which was later dismissed on appeal, without objection on the part of the State. As such, this Court has no choice but to reverse and reinstate Alexander's parole status.

II. DID THE LOWER COURT ERR IN HOLDING THAT ALEXANDER'S PETITION WAS TIME-BARRED UNDER § 99-39-5 (Supp.1993)?

The order of the lower court stated in part that:

> In August of 1987, the County Court Judge in Forrest County dismissed the simple assault charge; that Order recites that the charge was dismissed on a Motion of Mr. Alexander to dismiss to which the County Prosecuting Attorney had no objection; it does not state that he was found not guilty. Clearly, because the parole had already been revoked, it would have been a waste of time and money to proceed on a misdemeanor appeal. At page 5 of his Petition, Mr. Alexander states that there was 'a valid reason for revoking his parole status' from September, 1986, until August 4, 1987. If there were a valid reason to revoke his parole in 1986, his parole was properly revoked; he was not 'acquitted of' the simple assault charges as he claims; the County simply decided not to continue or prosecute the charge. Furthermore, any right to file for Post-Conviction Relief began to run in August, 1987, and this matter is barred by the 3-year time limitation of § 99-39-5(2).

Alexander contends that because his arguments are predicated on an unlawful revocation of his parole, his motion and appeal are specifically excepted from the three-year filing requirement set forth in § 99-39-5(2) (Supp.1993). This section states in part that:

> A motion for relief under this chapter shall be made within three (3) years after the time in which the prisoner's direct appeal is ruled upon by the supreme court of Mississippi or, in case no appeal is taken, within three (3) years after the

> time for taking an appeal from the judgment of conviction or sentence has expired, or in case of a guilty plea, within three (3) years after entry of the judgment of conviction. Excepted from this three-year statute of limitations are those cases in which the prisoner can demonstrate either that there has been an intervening decision of the supreme court of either the state of Mississippi or the United States which would have actually adversely affected the outcome of his conviction or sentence or that he has evidence, not reasonably discoverable at the time of trial, which is of such nature that it would be practically conclusive that had such been introduced at trial it would have caused a different result in the conviction or sentence. ***Likewise excepted are those cases in which the prisoner claims that his sentence has expired or his probation, parole or conditional release has been unlawfully revoked.*** [emphasis supplied].

The State counters this argument, stating that the lower court was correct in determining Alexander's motion was time-barred under § 99-39-5 (Supp.1993). The State, in its brief, supports both sides of this argument by stating:

> While the statute does exempt cases such as the one at bar, in which the petitioner is claiming that his parole was unlawfully revoked, the state submits this exception should be read to exempt those prisoners claiming unlawful parole revocation from filing their petitions within three years of the judgment of conviction or affirmance of the judgment. Because parole itself might be granted well over three years after these events, with revocation occurring even later, this exception is necessary to ensure that those prisoners have a

> fair opportunity to present their claims. Otherwise, such a prisoner might find his claim barred before it came into existence: Once a claim does come into being, though, it should be made within three years.
>
> Obviously, then a prisoner claiming unlawful parole revocation is not required to file his petition within three years of the events specified in the first sentence of the statute. The circuit court recognized this exception, but appropriately held that the statute began to run on the date that the claim came into existence – August 4, 1987, when the county court dismissed the simple assault charge . . . The circuit court's reading comports with the clear intent of the statute [footnote omitted]. A contrary interpretation would give those prisoners claiming unlawful parole revocation an indefinite period of time to file their petitions and would defy the purpose of the statutory scheme. *See Morris v. State,* 595 So.2d 840, 844 (Miss.1991).

Alexander was convicted of simple assault in 1986 and his appeal in county court was final on August 4, 1987. If we assume that the three-year limitation is applicable to his case, Alexander had until August 3, 1990, to file under the PCR act. Alexander filed on January 11, 1991. However, because Alexander sought to challenge the revocation of his parole, his cause of action indeed fit squarely within the exception of § 99-39-5(2). The motion and relief requested by Alexander was incorrectly deemed time-barred by the lower court.

CONCLUSION

Based on the record as supplemented, it appears that the Parole Board first revoked Alexander's parole because of his mental state and condition. Family members filed assault charges to gain intervention from court officials for help in regard to Alexander's mental condition. However, there is no evidence in the record concerning Alexander's mental fitness. Further, based on the record as supplemented, it appears that Alexander's post-conviction relief motion was denied by the Sunflower Circuit Court based on his justice court conviction of simple assault. The conviction was deemed a violation of condition five of Alexander's parole agreement, which required that he "live and remain at liberty without violating the law." This conviction was later dismissed by the county court of Forrest county without objection by the State. Therefore, we are forced to reverse this cause and reinstate Alexander to his parole status.

As to the second issue raised by Alexander, the lower court was incorrect in deeming his motion time barred under § 99-39-5(2). This case falls squarely within the enumerated exception pertaining to "unlawfully revoked" parole.

REVERSED AND RENDERED.

HAWKINS, C.J., DAN M. LEE and PRATHER, P.JJ., and SULLIVAN, BANKS, McRAE, JAMES L. ROBERTS, Jr. and SMITH, JJ., concur.

667 So.2d 1

Supreme Court of Mississippi.

John P. ALEXANDER
v.
STATE of Mississippi, Carmen Gettis Castilla and Mississippi State Parole Board.

No. 92-KA-00010-SCT.

Nov. 30, 1995.

Decision of Circuit Court affirmed.

McRae, J., concurred in result only.

Banks, J., concurred with separate opinion joined by Sullivan and McRae, JJ.

Opinion 647 So.2d 693, withdrawn.

Appeal No. 912312 from Judgment dated Nov. 27, 1991, Howard Q. Davis, Jr., Ruling Judge, Sunflower County Circuit Court.

Dan R. Wise, Hattiesburg, for Appellant.

Michael C. Moore, Attorney General, Deirdre McCrory, Sp. Asst. Attorney General, Jackson, for Appellee.

EN BANC.

ON PETITION FOR REHEARING

HAWKINS, Chief Justice, for the Court:

The present case was considered by this Court in *Alexander v. State of Mississippi, Carmen Gettis Castilla and Mississippi State Parole Board,* No. 92-KA-00010 (decided December 8, 1994). After full consideration, we hereby grant the State's Petition for Rehearing. Therefore, this Court's original opinion is hereby withdrawn and the following opinion is to be substituted therefore.

STATEMENT OF THE CASE

In 1978, Alexander was convicted of murder in the Circuit Court of Hinds County and ordered to serve a life sentence in the custody of the Mississippi Department of Corrections. This Court subsequently affirmed the conviction and sentence in *Alexander v. State,* 358 So.2d 379 (Miss.1978). Alexander was paroled in August of 1984.

On September 23, 1986, Alexander was arrested and charged with simple assault. He was convicted of that charge on September 26, 1986, in the Forrest County Justice Court. Alexander was returned to Parchman prison on October 3, 1986. After being duly noticed, Alexander was given a parole revocation hearing on October 27, 1986. Alexander received from the Board a notice concerning this hearing, which stated in part:

> The Parole Board shall have the authority to continue, revoke or modify your Parole. The allegations against you are:
>
> > violation of condition # 5: you were arrested, charged and found guilty of simple assault; (5) I will live and remain at liberty without violating the law.

Alexander's parole was revoked by Order dated October 27, 1986. On November 3, 1986, Alexander perfected an appeal of the simple assault conviction to the Forrest County Court. The county court thereafter on August 4, 1987, entered an Order dismissing the simple assault charges.

In January of 1991, Alexander filed a Writ of Habeas Corpus in the Circuit Court of Sunflower County, challenging the revocation of his parole. Alexander received notice for a hearing on the Motion, signed by Magistrate Betty W. Sanders, and a hearing was held on April 24, 1991. After considering all the evidence, the circuit court denied Alexander's petition. Alexander thereafter filed a motion for reconsideration. This motion was also denied by the lower court.

Aggrieved by the lower court's dismissal of his claim, Alexander filed notice of appeal to this Court and presented the following for review:

> ***I. THE LOWER COURT ERRED IN DISMISSING WITH PREJUDICE ALEXANDER'S MOTION FOR POST-CONVICTION RELIEF***
>
> ***II. THE LOWER COURT ERRED IN HOLDING THAT ALEXANDER'S PETITION WAS TIME-BARRED UNDER § 99-39-5 (Supp. 1993)***

By Order of this Court, dated April 14, 1994, the record for the case *sub judice* was supplemented by Judge Howard Q. Davis's subsequent order as follows:

> The information received in response to those requests reflect that on September 20, 1986, James Peyton Alexander, father of the petitioner in this cause, made affidavit before the clerk of Forrest County Justice Court that petitioner had committed an assault upon him and petitioner's sister by making threats of bodily harm and that Mr. Alexander considered "John dangerous to his family and himself." The Justice Court found him guilty on September 26, 1986. On October 27,

> 1986, Mr. Alexander's parole was ordered revoked. On November 3, 1986, an appeal was perfected to the County Court of Forrest County. There was no transcript made of any proceedings in the County Court, but that Court, by Order dated August 4, 1987, dismissed the cause on Mr. Alexander's motion to which the County Prosecuting Attorney did not object. The Motion to Dismiss was filed on July 24, 1987; that Motion was based upon an Affidavit of the father who stated that he filed the Justice Court action "in order to get him medical assistance and get his antidepressant medications regulated when I was unable to receive assistance from the Chancery Court of Forrest County." He stated that he was "now no longer willing to testify in the case for the prosecution."
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> The record of the parole board hearing reflects that petitioner admitted to the charge of simple assault and that he had earlier been paroled, in large part, due to his mother's assurances to the Parole Board that she would see that he took his medicine.

Alexander filed a response to this Court's remand for supplementation, stating there was neither a transcript of the county court proceedings nor a record of Alexander's parole revocation hearing.

Notwithstanding Alexander's assertion, a transcript of the parole revocation hearing was indeed forwarded to this Court pursuant to the April 14, 1994 Order.[1]

---

[1] The transcript does not list the members or persons present at the time the transcript was made.

The State in its Petition emphasizes the following exchange the [sic] transpired during the course of Alexander's parole revocation hearing:

> CHAIRMAN:
> You were arrested and charged on 9/26/86, found guilty in Forrest County Justice Court of the crime of simple assault attempt to create fear under Section 97-3-7 of the Mississippi Code. Are you guilty?
> ALEXANDER:
> Yes sir.
> CHAIRMAN:
> Do you understand the charges?
> ALEXANDER:
> Yes sir.
> CHAIRMAN:
> Do you have anything to say or do you want your attorney to talk for you?
> ALEXANDER:
> Well, I would like to say that I was not on my medication when the crime happened. I'm on my medication now.

During the course of the parole revocation hearing held on October 27, 1986, it was in fact determined that Alexander had discontinued certain medications sometime prior to his father bringing the simple assault charges in Forrest County Justice Court in September, 1986. An unidentified woman commented at the hearing that "[t]his was a justice court conviction. The time for his appeal has not elapsed and he has signed an appeal bond today to appeal that conviction to the county court." She further stated that she "would like to have John released to have some treatment rather than have his parole revoked." In addition, Alexander's parole officer believed he was doing very well and faithfully reported in. There was a great deal of discussion about Alexander ceasing to take his medication and whether this action was approved by his treating physicians.

The chairman presiding at this hearing stated:

> As you know, we've discussed this case and . . . it is a hard case. In our discussion, it is our opinion that we are going to revoke John for one (1) year and request that Dr. Whellan put him under his supervision and . . . and whatever Dr. Whellan sees fit and that would be perfectly alright with the board and we will request a report from Dr. Whellan when John comes back before us next time.

A female voice, again unidentified, stated that she thought that "Mr. Alexander was concerned to make clear to this board that he took this action in filing the simple assault charge as a preventative measure that he was not concerned to have John charged with the assault charge."

The Parole Board revoked Alexander's parole in October, 1986. Alexander, in turn, filed for post-conviction relief, which was denied by the circuit court in 1991. The admission by Alexander concerning the simple assault charge that was brought in the Forrest County Justice Court, together with the other material before this Court requires that the circuit court's order denying Alexander's petition for post-conviction relief be affirmed. The relevant authority for such decision is set forth in the discussion that follows.

I. WHETHER THE LOWER COURT ERRED IN DISMISSING WITH PREJUDICE ALEXANDER'S MOTION FOR POST-CONVICTION RELIEF?

Alexander, in both his petition to the circuit court and his direct appeal to this Court, argues that his parole was unlawfully revoked due to the fact that the county court ultimately dismissed the charges which originally resulted in the justice court conviction. Alexander questions the validity of the justice court conviction and further argues that the county court's subsequent action of dismissing the charges serves to nullify the earlier justice court conviction. This argument focuses on the fact that the county court conducts a *de novo* review. In part Alexander relies on §§ 11-51-81 through 11-51-91 of the Mississippi Code of 1972. These sections provide the framework for appeals in and from the lower courts. However, nothing in these statutes specifically supports Alexander's assertions and arguments. In addition, Alexander cites *Moore v. Ruth,* 556 So.2d 1059, 1062 (Miss.1990), for the proposition that "where a parolee is subsequently acquitted or found not guilty of a felony for which parole has been revoked, this State must prove facts and circumstances, apart from an arrest, charge or conviction, which warrant revocation of parole."

The State counters this argument by relying on the fact that Alexander failed to sustain his requisite burden of factually showing that the revocation of his parole was predicated exclusively on his justice court conviction. *Moore v. State,* 587 So.2d 1193, 1197 (Miss.1991).

This Court's holdings in the *Moore v. State* and *Moore v. Ruth* cases are applicable to the case *sub judice.* In

Moore v. Ruth, 556 So.2d 1059 (Miss.1990), this Court discussed the applicable standard for revocation of parole:

> Moore has been *granted parole,* and the heart of his complaint is that the State impermissibly revoked his parole. On revocation, the State's authority is much narrower, for before one released on parole may be returned to custody, it must be shown that he has violated the terms and conditions of parole. Miss.Code Ann. § 47-7-27 (Supp.1989). Obviously, commission of a felony while on parole is grounds for revocation, [citation omitted], nor is it necessary that parole authorities await the principal trial before commencing proceedings to have the parole revoked. None of this carries us far where, as here, the parolee is found not guilty of the principal charge which formed the basis of the order of revocation.

556 So.2d at 1061 [emphasis in original].

From the record it appears that the Parole Board hearing, conducted to determine whether to revoke Alexander's parole, focused on both the justice court conviction and whether Alexander ceased taking his prescribed medication. The substance of Alexander's responses during the parole revocation hearing support the actual violation of condition five of his parole agreement. We find such evidence to comport with the law set forth in *Moore v. Ruth,* which requires a showing "that he has violated the terms and conditions of his parole." *Id.* at 1061.

Condition five required that Alexander "live and remain at liberty without violating the law." Whether or not Alexander's parole was lawfully revoked turns on whether there was a sufficient showing that Alexander violated this condition. We find that the complete record of the parole revocation hearing supports the notion that the revocation was proper as it pertained to the conviction obtained in justice court and later appealed to and dismissed by the county court.

We further find based on the record through supplemental documents, filings, and the State's Petition for Rehearing that the Board did not rely solely on Alexander's justice court conviction as a violation of condition five of the parole agreement. We have before us now a clear and unambiguous admission by Alexander that he was found guilty of simple assault and that he understood the nature of these charges.

In *Moore v. Ruth,* 556 So.2d at 1062, this Court said: "[t]he acquittal on the criminal charge means at the very least that, before the accused's parole may be revoked, the State must offer actual proof that he committed an act violating the terms and conditions of his parole, and the mere fact that he was arrested and charged with rape may hardly suffice."

Further, in *Moore v. State,* 587 So.2d 1193, 1196 (Miss.1991), we stated that "[b]efore one released on parole may be returned to custody, it must be shown that he has violated the terms and conditions of parole. Miss.Code Ann. § 47-7-27 (Supp.1989)." *Id.* at 1196.

In the case *sub judice,* the record of the hearing along with Alexander's admission points to the conviction in justice court as a valid basis for the revocation of Alexander's parole. There was a conviction at the justice court level, which distinguishes it from the "acquittal" category set forth in *Moore.* This Court finds persuasive, Alexander's comments made during the hearing. Such amounts to actual proof that Alexander violated the terms and conditions of his parole. This in addition to the justice court conviction supports the circuit court's ruling. Accordingly, we affirm the lower court's denial of Alexander's petition for post-conviction relief.

II. DID THE LOWER COURT ERR IN HOLDING THAT ALEXANDER'S PETITION WAS TIME-BARRED UNDER § 99-39-5 (Supp.1993)?

The order of the lower court stated in part that:

> In August of 1987, the County Court Judge in Forrest County dismissed the simple assault charge; that Order recites that the charge was dismissed on a Motion of Mr. Alexander to dismiss to which the County Prosecuting Attorney had no objection; it does not state that he was found not guilty. Clearly, because the parole had already been revoked, it would have been a waste of time and money to proceed on a misdemeanor appeal. At page 5 of his Petition, Mr. Alexander states that there was "a valid reason for revoking his parole status" from September, 1986, until August 4, 1987. If there were a valid reason to revoke his parole in 1986, his parole was properly revoked; he was not 'acquitted of' the simple assault charges as he claims; the County simply decided not to continue or prosecute the charge. Furthermore, any right to file for Post-Conviction Relief began to run in August, 1987, and this matter is barred by the 3-year time limitation of § 99-39-5(2).

Alexander contends that because his arguments are predicated on an unlawful revocation of his parole, his motion and appeal are specifically excepted from the three-year filing requirement set forth in § 99-39-5(2) (Supp.1993). This section states in part that:

> A motion for relief under this chapter shall be made within three (3) years after the time in which the prisoner's direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired, or in case of a guilty plea, within three (3) years after entry of the judgment of conviction. Excepted from this three-year statute of limitations are those cases in which the prisoner can demonstrate either that there has been an intervening decision of the supreme court of either the State of Mississippi or the United States which would have actually adversely affected the outcome of his conviction or sentence or that he has evidence, not reasonably discoverable at the time of trial, which is of such nature that it would be practically conclusive that had such been introduced at trial it would have caused a different result in the conviction or sentence. *Likewise excepted are those cases in which the prisoner claims that his sentence has expired or his probation, parole or conditional release has been unlawfully revoked.* [Emphasis added].

The State counters this argument, stating that the lower court was correct in determining Alexander's motion was time-barred under § 99-39-5 (Supp.1993). The State, in its brief, supports both sides of this argument by stating:

> While the statute does exempt cases such as the one at bar, in which the petitioner is claiming that his parole was unlawfully revoked, the state

> submits this exception should be read to exempt those prisoners claiming unlawful parole revocation from filing their petitions within three years of the judgment of conviction or affirmance of the judgment. Because parole itself might be granted well over three years after these events, with revocation occurring even later, this exception is necessary to ensure that those prisoners have a fair opportunity to present their claims. Otherwise, such a prisoner might find his claim barred before it came into existence. Once a claim does come into being, though, it should be made within three years.
>
> Obviously, then a prisoner claiming unlawful parole revocation is not required to file his petition within three years of the events specified in the first sentence of the statute. The circuit court recognized this exception, but appropriately held that the statute began to run on the date that the claim came into existence – August 4, 1987, when the county court dismissed the simple assault charge . . . The circuit court's reading comports with the clear intent of the statute [footnote omitted]. A contrary interpretation would give those prisoners claiming unlawful parole revocation an indefinite period of time to file their petitions and would defy the purpose of the statutory scheme. *See Morris v. State,* 595 So.2d 840, 844 (Miss.1991).

Alexander was convicted of simple assault in 1986 and his appeal in county court was final on August 4, 1987. If we assume that the three-year limitation is applicable to his case, Alexander had until August 3, 1990, to file under the PCR act. Alexander filed on January 11, 1991. However, because Alexander sought to challenge the revocation of his parole, his cause of action indeed fit squarely within the exception of § 99-39-5(2). The motion and relief requested by Alexander was incorrectly deemed time-barred by the lower court.

CONCLUSION

After additional analysis and review, we find that the actions and rulings of the Sunflower Circuit Court based on Alexander's justice court conviction of simple assault and parole revocation hearing were proper. The conviction was deemed a violation of condition five of Alexander's parole agreement, which required that he "live and remain at liberty without violating the law." It is apparent that Alexander was cognizant of these charges and that he further admitted his guilt. Therefore, we affirm the ruling of the Sunflower Circuit Court.

As to the second issue raised by Alexander, the lower court was incorrect in deeming his motion time barred under § 99-39-5(2). This case falls squarely within the enumerated exception pertaining to "unlawfully revoked" parole.

AFFIRMED.

DAN M. LEE and PRATHER, P.JJ., and SULLIVAN, PITTMAN, BANKS, JAMES L. ROBERTS, Jr. and SMITH, JJ., concur.

McRAE, J., concurs in result only.

BANKS, J., concurs with separate written opinion joined by SULLIVAN and McRAE, JJ.

BANKS, Justice, concurring:

I concur in the result reached by the majority because, in my view, the record supports the conclusion that the Parole Board relied upon the failure to take medication giving rise to the circumstances leading to the justice court conviction rather than the fact of conviction standing alone. I do not agree with the majority opinion insofar as it may be read to assert that a justice court conviction, which is later rendered nugatory by an appellate acquittal on the charge, is sufficient, standing alone for the revocation of parole. There is little to distinguish an acquittal at the county or circuit court level following a justice court conviction from an acquittal at the circuit court level following a felony charge. In either event, if revocation is based on the fact of the charge or even a conviction subject to *de novo* consideration, as opposed to an independent finding of conduct violative of parole, revocation should be set aside. *Moore v. Ruth,* 556 So.2d 1059 (Miss.1990).

SULLIVAN and McRAE, JJ., join this opinion.

APPENDIX C

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

JOHN PEYTON ALEXANDER, II

NOTICE

TO THE CHANCERY COURT OF THE
FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI:

Please take notice of the action of the Grand Jury for the First Judicial District of Hinds County, Mississippi, in *State of Mississippi vs. John Peyton Alexander, II*, as contained in the attached "Certification of the Grand Jury."

Dated this 25th day of November, 1975.

/s/ Leon F. Hendrick
CIRCUIT JUDGE

IN THE CIRCUIT COURT OF THE
FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

JOHN PEYTON ALEXANDER, II

CERTIFICATION OF THE GRAND JURY

(Filed Nov. 24,1975)

The Grand Jury for the First Judicial District of Hinds County, Mississippi, impaneled and acting for the regular November, 1975, term, acting by and through its Foreman, certifies unto the Court as follows:

The Grand Jury has investigated the homicide of Harriet Robinson which occurred on or about October 4, 1975, at Parham Bridges Park in the City of Jackson, Mississippi. John Peyton Alexander, II, has been charged with the murder of Harriet Robinson by officials of the police department of the City of Jackson, Mississippi, and is now being held without bond in the jail at the Municipal Court Building in the City of Jackson, Mississippi.

This Grand Jury does not find a true bill against John Peyton Alexander, II, by reason of his insanity, which this grand jury adjudges to be such that he was not, on October 4, 1975, at Parham Bridges Park in the City of Jackson, Mississippi, when the homicide occurred, responsible for his acts at the time the acts were committed and made, and this grand jury does hereby certify such facts to the Circuit Court of the First Judicial District of Hinds County, Mississippi, and further certifies that John

Peyton Alexander, II, is a present danger to the security of persons and property, and the peace and safety of the community.

This Grand Jury further reports of such insanity of John Peyton Alexander, II, and such danger, to the Circuit Court of the First Judicial District of Hinds County, Mississippi, and requests of the Court that notice of the case be given to the Chancery Court of the First Judicial District of Hinds County in Jackson, Mississippi, or to the clerk of said court, with a request that the Chancery Court proceed with John Peyton Alexander, II, according to the law provided in the case of persons of unsound mind.

The Grand Jury further recommends that John Peyton Alexander, II, remain in the custody of the Jackson Police Department in the jail at the Municipal Court Building in Jackson, Mississippi, until such time as the Chancery Court has an opportunity to complete its proceedings according to law.

Dated this 24th day of November, 1975.

/s/ Dell R. Crisler
FOREMAN OF THE GRAND JURY

/s/ Ed Peters
DISTRICT ATTORNEY

[This Order Taken to Chancery Court 11/25/75]

APPENDIX D

INDICTMENT–MURDER 0-261

THE STATE OF MISSISSIPPI, }
First District, Hinds County. }

CIRCUIT COURT

March Term, A. D., 1976
FIRST JUDICIAL DISTRICT
OF HINDS COUNTY

(Filed Mar. 1, 1976)

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful persons of the first Judicial District of Hinds, County, in the State of Mississippi, elected, impaneled, sworn, and charged to inquire in and for said District, County and State aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present: That John P. Alexander

in said District, County and State on the 4th day of October, A. D., 1975

did then and there willfully, unlawfully, feloniously and of his malice aforethought kill and murder Harriot Robinson, a human being contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

/s/ [Illegible]
Grand Jury Foreman

/s/ Edward J. Peters
District Attorney.

IN THE CIRCUIT COURT OF THE
FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS. CAUSE NO. 0-261

John Peyton Alexander II

JURY VERDICT AND SENTENCING OF THE DEFENDANT BY THE COURT

Now comes the District Attorney who prosecuted for and on behalf of the State of Mississippi and the Defendant, John Peyton Alexander II, in his own proper person, in custody and by counsel, being called to answer a charge of Murder, being arraigned upon the charge in the indictment, duly entered a plea of Not Guilty thereto.

Thereupon came a Jury of Mr. Paul S. Purvis and eleven other good and lawful citizens who being duly empannelled, sworn and charged to well and truly try the issue joined and a true verdict render according to the law and the evidence. After hearing all the evidence and arguments of counsel, and receiving the instructions of the Court, retired and presently returned into open Court the following verdict, to wit: "We, the Jury, find the defendant guilty as charged."

It is therefore ordered and adjudged that the Defendant, John Peyton Alexander II, for such his crime of Murder, to which he has been found Guilty as Charged, be and hereby is sentenced to serve a term of life in the Mississippi State Penitentiary ____.

SO ORDERED AND ADJUDGED, this the 7 day of May, 1976.

/s/ Russel W. Moore
CIRCUIT JUDGE

358 So.2d 379

Supreme Court of Mississippi.

John Peyton ALEXANDER, II

v.

STATE of Mississippi.

No. 50035.

April 19, 1978.

Jacobs, Griffith, Pearson, Eddins & Povall, Charles C. Jacobs, Jr., Cleveland, for appellant.

A. F. Summer, Atty. Gen. by Karen A. Gilfoy, Asst. Atty. Gen. and Henry T. Wingate, Sp. Asst. Atty. Gen., Jackson, for appellee.

Before SMITH, ROBERTSON and LEE, JJ.

SMITH, Presiding Justice, for the Court:

John Peyton Alexander was indicted for murder. He was tried on that charge in the Circuit Court of the First Judicial District of Hinds County, convicted and sentenced to life imprisonment. From that conviction he has prosecuted this appeal.

The victim of the homicide was a Mrs. Robinson, a married woman, with whom Alexander had been involved in what is referred to as "an intimate affair."

The facts relating to the shooting of Mrs. Robinson by Alexander on October 4, 1975 are not in dispute. Nor is there material dispute as to the background facts which preceded and led up to the homicide.

Alexander was the swimming coach at the Jackson Country Club. His parents had been club members for most of his life but had disposed of their membership in 1971 because of financial problems. Both Mrs. Robinson and her husband were members of the club. During the summer months Alexander began having an affair with Mrs. Robinson, a married woman 37 years of age, with whom his duties at the club pool brought him in contact. In the course of the affair there were gifts, visits by Alexander to the Robinson home, automobile rides and even a trip to Florida by Alexander and Mrs. Robinson.

At the end of summer Alexander returned to Vanderbilt University where he was a student. He was called frequently by Mrs. Robinson there. About September 28, 1974 Mrs. Robinson's husband learned of the affair and telephoned Alexander, telling him to stay away from his wife. This call by Mrs. Robinson's husband to Alexander included threats, which Alexander considered dangerous to his life. As a result of Mrs. Robinson's husband learning of the affair, she broke up with Alexander and would have nothing further to do with him. Alexander became depressed and visited a psychologist at Vanderbilt. Later, he dropped out of school. After visiting his sister and friends in New Orleans he returned to Jackson and began living at home with his mother. He was worried by the fact that his parents were having marital problems, although this was not a new experience for Alexander. Alexander's father drank excessively at home and physically and verbally abused Alexander's mother. Moreover, Alexander's father was on the verge of bankruptcy although he had been regarded as wealthy and of high social standing.

After holding some odd jobs Alexander filed an application with the Jackson Country Club for the position of swimming coach, the same job he had previously held. His application was rejected when Mrs. Robinson and her husband circulated a petition to the members stating that Alexander was not competent. Alexander then attempted to secure a similar position at River Hills Club but was met again with rejection allegedly due to acts of Mrs. Robinson's husband, who knew several of the River Hills Club Board Members. Alexander became angry at these actions on the part of the Robinsons' and felt that he was not being treated fairly. He attempted to retaliate by xeroxing some of the love letters written to him by Mrs. Robinson and mailing the copies to several members of the Country Club. His purpose was to show that the petition circulated by the Robinsons stating that he was incompetent to be swimming coach was not based on mere incompetency but upon the affair in which he had been involved with Mrs. Robinson.

Following the circulation of the copies of Mrs. Robinson's letters by Alexander, her husband brought suit against Alexander demanding damages.

Thereafter Alexander obtained a coaching position at the YMCA for the summer of 1975. Alexander's parents had been divorced, remarried, and were in the process of obtaining another divorce.

In September, 1975 Alexander purchased a .380 automatic pistol and ammunition. At this time he had a construction job at Magee but was still living at home with his mother. On the night of October 3, 1975, Alexander attended a birthday party given for a friend, Albert Lamar, at the Golden Dragon Restaurant in Jackson. Alexander left the party and went home. Unable to sleep, he returned to Lamar's home about 11:00 p.m. He and several friends skateboarded in the street until the early morning hours.

The following morning, Saturday, October 4, 1975, Alexander had an engagement to play tennis with one James Anderson at Battlefield Park in Jackson. They played until around 11:15 in the morning and Alexander returned home at about noon.

There he told his mother that he wanted his checkbook so he could buy a new tennis racket. He left home, drove directly to the Parham Bridges Tennis Courts in Jackson, where Mrs. Robinson and one Betty Lewis were just finishing a tennis match. As the two women left the court and were walking past the bleachers, toward their car, Alexander walked rapidly up to Mrs. Robinson, drew his pistol from his pocket, and from a distance of three feet shot Mrs. Robinson in the left side of the head. As she fell, Alexander stepped closer and fired seven more shots into her head and neck as she lay upon the ground.

He then went home and told his mother that he had shot Mrs. Robinson. She directed him to call the police which he did.

The defense offered at the trial was that the homicide was excusable because Alexander was insane and incapable of distinguishing between right and wrong and that he was not guilty by reason of insanity.

On appeal, a number of grounds for reversal are assigned and argued.

It is first contended that the trial court erred in declining to permit several lay persons to give an opinion on the issue of appellant's sanity at the time of the shooting.

In the course of the presentation of appellant's case in chief several lay persons were offered to testify that in their opinion appellant was incapable of knowing the difference between right and wrong at the time he shot Harriet Robinson by reason of insanity.

The first of these witnesses, one Herlihy, was asked the following question:

> Do you have an opinion, based on your knowing John Alexander since you were both in the 9th grade, your conversations with him, and your observations of his demeanor, as to whether on October 4, 1975, when Harriet Robinson was shot, he knew the difference between right and wrong?

The State objected and the jury was retired. Out of the presence of the jury an examination of the witness was conducted and the court sustained the objection, ruling that the witness was not qualified to give an opinion as to Alexander's sanity at the time he shot Mrs. Robinson.

On the basis of the examination of Herlihy conducted out of the presence of the jury, it appears that the witness had talked with Alexander in the summer of 1975 and that Alexander had discussed the affair with Mrs. Robinson with the witness at that time. While the witness had seen Alexander the night before the shooting, his observation of him on that occasion extended no further than to note that Alexander had been "edgy" but, the witness said, this was not particularly unusual behavior for Alexander although he thought he was a little more edgy than usual.

In addition to Herlihy, several other lay witnesses were offered by appellant for the purpose of giving opinions that Alexander was insane and unable to distinguish between right and wrong at the time that he shot Mrs. Robinson. Each of these witnesses was examined out of the presence of the jury and the court declined to allow them to so testify. Summaries of their testimony as it bears upon the question follow:

> MALLETTE: The witness saw Alexander two weeks before the killing and said that Alexander was depressed and had said that he contemplated suicide. He saw Alexander again in jail the day after the shooting and said that on that occasion Alexander seemed to have just realized that he had done something wrong.
>
> BRICKELL: Alexander told this witness in 1975 about his affair with Mrs. Robinson and was upset about it. The last time the witness saw Alexander was in August, 1975.
>
> PHILLIPS: Witness met Alexander in June, 1975, and was told by Alexander of his affair with Mrs. Robinson and Alexander seemed unable to get his mind on anything else. She saw Alexander two weeks before the shooting and he appeared uncertain and upset.
>
> TAYLOR: Witness had known Alexander for six or seven years. In the summer of 1975 Alexander was "completely obsessed" with his affair with Mrs. Robinson. He told the witness that he had long contemplated suicide. The last time the witness saw Alexander was on October 2, 1975. She also stated that she had had a long conversation with Alexander some ten days prior to the shooting. Witness neither related any statement nor described any behavior on the part of Alexander which had occurred on either occasion.
>
> VANCE: He had known Alexander since 1959. Alexander was spoiled as a child and was afraid of his father. Witness talked with Alexander in the fall of 1974 and was told by Alexander

> of his affair with Mrs. Robinson. He also was told that Alexander had thoughts of suicide. The last time witness saw Alexander was on October 1, 1975, at which time Alexander talked of his affair with Mrs. Robinson and said that Mrs. Robinson's husband had hired someone to kill him. Alexander was "nervous and shaking."
>
> LAMAR: Witness had known Alexander for about four years. Alexander was upset about his affair with Mrs. Robinson and about losing his job at the Country Club. Alexander mentioned his thoughts of suicide. Witness said Alexander was afraid of Mr. Robinson, the victim's husband. Although the witness saw Alexander at a party the night before the shooting, he gave no facts or circumstances as to statements or behavior on the part of Alexander on that occasion.

The rule allowing a lay witness to give an opinion as to the mental competency of another was dealt with by this Court in *In re Estate of Prine*, 208 So.2d 187, 190 (Miss.1968). In *Prine* this Court said:

> This hypothetical question was asked of other laymen whose answers were to the same effect. These witnesses also admitted during their examinations that they could not tell anything about his mental state at a time when they did not see him. Of course, a layman could not reasonably know the condition of a testator's mind when he did not see the testator. The question propounded was a question for the experts. Certainly it would take an expert to tell from the appearances and actions of a man, observed prior to his entry in the hospital and after his discharge from the hospital, whether the man was competent or incompetent on a certain date between entry and discharge. Several of the

> witnesses said the testator had lucid intervals. One who was not there could not know, and would not be in a position to know, whether a man who had lucid intervals was lucid or not at a particular time.
>
> As a general rule, the opinion of a non-expert witness as to a person's sanity or soundness of mind, if based on knowledge or observation, may be received; but the opinion may not extend to matters requiring expert knowledge. . . .
>
> A non-expert witness cannot give his opinion regarding sanity based on an abstract hypothetical question. . . .
>
> An opinion of a lay witness on the question of another's insanity must be limited to the impression made at the time of observation. *Ross v. State*, 153 Tex.Cr.R. 312, 220 S.W.2d 137 (1949); *State v. Douglas*, 312 Mo. 373, 278 S.W. 1016 (1925); 23 C.J.S. Criminal Law s 867 at 422 (1961).
>
> Non-expert witnesses cannot be allowed to project the opinion as to the mental condition of accused at a future time. *Ross v. State, supra*; 23 C.J.S., *supra. See also Harvey v. State*, Miss., 207 So.2d 108 (Feb. 19, 1968).

Appellant contends that the rule announced in *Prine*, a civil case, should not be extended to criminal cases. Except where constitutional questions are involved, such as the admissibility of evidence of the fruit of an unlawful search and the like, the rules as to admissibility of evidence is generally the same in criminal cases as in civil. Moreover, in support of the *Prine* rule, this Court cited two criminal cases: *Ross v. State* and *State v. Douglas, supra*.

In *Douglas, supra*, which was a prosecution for forgery, the Supreme court of Missouri stated:

> Counsel for defendant were not satisfied with that, but wanted the witness to testify to what his present opinion was regarding the sanity or insanity of the defendant, two years after he had made such observations. A lay witness, in testifying to such matters, may give an opinion when based upon the facts which he has observed, after stating such facts as far as he can. It is the impression made upon his mind at the time that is important. An opinion conceived at a later time is not the impression received at the time, from facts immediately observed then, but from later and riper knowledge. To say that a lay witness may afterwards, on mature reflection, possibly with expert advice as to the matter, and an analysis of the facts as he has considered them from later experience, express an opinion, puts him in the class of an expert instead of nonexpert witnesses.

(312 Mo. at 399, 278 S.W. at 1024).

In *Ross* the Court of Criminal Appeals in Texas, held:

> Nonexpert witnesses are confined to their opinions only at the time of their observations of the accused person and cannot be allowed to project their opinions as to the mental condition of such accused at a future time. . . .
>
> A nonexpert insanity witness cannot be allowed to give his opinion on a question of insanity at a future date. To thus allow would place him in the category of an expert.

(153 Tex.Cr.R. at 327, 220 S.W.2d at 146).

In 23 C.J.S. Criminal Law s 867b (1961), the rule is stated thus:

> The opinion of the witness on the question of insanity is properly limited to the impression made at the time of observation; nonexpert witnesses cannot be allowed to project their opinions as to the mental condition of accused at a future time.

The correct rule, therefore, is that a lay witness may express an opinion that another is insane only when a sufficient predicate has been laid to establish that: (1) the witness has had a reasonably sufficient opportunity to observe the subject and (2) has noted behavior on his part reasonably indicative of an unsound mind and upon which he bases an opinion that the subject was, at the time of his observation by the witness, of unsound mind. The witness may not make a prognosis or project into some future time an opinion as to the mental condition of the subject nor may he extend it to a date subsequent to the observation. He is limited, in expressing an opinion, to the time when he had the subject under his observation. Moreover, before being permitted to express an opinion, the witness must have articulated specific facts concerning observed behavior on the part of the subject sufficient to serve as a predicate for his opinion, and such observed facts must be of a character capable of forming a reasonable basis for an opinion of insanity.

The testimony of the lay witnesses offered by appellant wholly fails to articulate facts noted in the behavior of Alexander indicating that he was laboring under a delusion of any kind or that his reaction to any of the conditions which confronted him was abnormal or was such as to indicate that he was insane or incapable of distinguishing between right and wrong. On the contrary, in the circumstances of the case, which are undisputed, his reactions can hardly be said to be other than what those of a normal person would have been under similar conditions. It was said that he was "preoccupied" with his affair with Mrs. Robinson; he was upset by his parents' marital troubles; he talked of suicide but made no attempt to commit it; he was upset by the lawsuit brought against him by the victim's husband; he had been spoiled as a child and was afraid of his father; he was afraid of Mrs. Robinson's husband, whom he had wronged, and whom Alexander had further humiliated and insulted by distributing copies of love letters written by Robinson's wife to him, and he was afraid, not unnaturally, that the husband might kill him; he was upset by the loss of his job as life guard, the job by means of which he had established his liaison with Mrs. Robinson. All of the things related by the witnesses were not imaginings or delusions but were facts, and in every case the reaction of Alexander was no more nor less than that of any normal human being who had behaved as Alexander had behaved and who had been found out. There is nothing in the testimony of these witnesses capable of forming a reasonable basis for an opinion that Alexander was insane at the time he shot Mrs. Robinson. Moreover, although two of the witnesses had seen Alexander at a party the night before the shooting, they testified to no facts or circumstances relating to any statement or behavior on the part of Alexander on that occasion other than to say that Alexander had been "edgy" and that this was not unusual.

It is the observation by the lay witnesses of irrational or abnormal behavior on the part of a subject that justifies allowing him to give an opinion on the question of sanity. Laymen who comprise the jury are also capable, upon facts related by such a witness, of forming their own opinion as to the subject's sanity, and the facts and circumstances related by the witness, in order to be sufficient to permit the giving of an opinion of insanity, must be such as are reasonably capable of supporting it. A lay witness, merely because he has known a person over a length of time, may not be allowed to testify that in his opinion such person is insane, where the witness had not observed any act or behavior on the part of the subject reasonably capable of supporting that conclusion. The trial court correctly declined to allow these witnesses to give an opinion that Alexander was insane at the time he shot Mrs. Robinson, first because a sufficient predicate was not laid in their testimony and second, because their statements as to their observations of Alexander's behavior dealt with conduct and demeanor which did not extend to the time Mrs. Robinson was shot. It should be noted also, that following the court's refusal to allow the giving of an opinion by these witnesses that Alexander was insane at the time he shot Mrs. Robinson, the witnesses were not reoffered to testify as to his sanity at the times they had him under observation and had testified about.

They stated no facts capable of affording cogent support for the theory that Alexander was insane. He may have harbored deep resentment and hatred against Mrs. Robinson for having broken off the affair with him, and Alexander may have been afraid of her husband and angry with him for warning him away from his wife and for having brought suit against him. But these things, rather than constituting evidence of insanity, traditionally, and judged by the history of the human race, more often are thought of as motives for murder.

The second contention of appellant relates to an alleged error committed by the trial court in admitting certain testimony of Dr. Baugh, Dr. Collum and Dr. Pollack, expert witnesses for the State, upon the question of Alexander's sanity.

In the course of the trial, the court directed Dr. Pineda, an expert witness for appellant on the issue of insanity, to turn over to the District Attorney certain documents. Dr. Pineda went to his automobile during the noon recess and obtained his file which contained his information in regard to the case. Through inadvertence Dr. Pineda included some letters written by Alexander while in jail to his attorney and which had been given by the attorney to Dr. Pineda for his use in preparing to testify in the case. Copies of these letters were made and given to the State's psychiatrists for their use in preparing for the case.

Dr. Pineda duly testified as an expert witness for the defense and gave it as his opinion that Alexander had been of unsound mind to the extent that he had been incapable of distinguishing right from wrong at the time he killed Mrs. Robinson.

Cross-examined as to the basis for that opinion, Dr. Pineda stated:

> A. In the case I am testifying I went to the sources I felt were adequate to give me to form an impression.
>
> Q. What were those sources?
>
> A. The time I spent with the defendant, the conversations I had with his mother, the

testimony from Clare Alexander, reading letters that were sent to defendant's attorney, etc.

On direct examination, Dr. Baugh, an expert witness for the State, gave it as his opinion that appellant knew the difference between right and wrong at the time he shot Mrs. Robinson. On cross-examination it was developed that a part of the basis for his opinion had been one of the letters written by Alexander to his attorney. Appellant objected and asked that Dr. Baugh's testimony be stricken on the ground that the letters were privileged as communications between attorney and client and that appellant had not consented to their use by the State. The trial court overruled the objection and denied the motion, stating his reasons at length.

Dr. Pollack, also an expert witness for the State, testified that he had read the letters and that they had been a basis for his opinion that Alexander had been legally sane at the time of the shooting. The witness also read from the letters on direct examination. Appellant again objected on the ground that they were privileged and the objection was overruled.

The final expert witness for the State was Dr. Collum. This witness testified that he had formed his opinion prior to reading the letters that Alexander had known the difference between right and wrong at the time he shot Mrs. Robinson. The hypothetical question addressed to him by the District Attorney stated, in part, "And based on your review and study of letters and communications of the defendant." Dr. Collum responded by stating that in his opinion Alexander had been legally sane at the time of the homicide.

The State's position is that the letters were not privileged but, even if they were, appellant waived the privilege by submitting them to Dr. Pineda for his use in preparing and giving his testimony that Alexander had been insane, using the letters, among other things, as the basis for the opinion.

The State relies upon *City of Laurel v. Upton*, 253 Miss. 380, 175 So.2d 621 (1965), a personal injury action. In that case, plaintiff placed on the stand in support of the claim a Dr. Holder, a medical expert. On cross-examination, Dr. Holder revealed that he had used some letters and reports of another doctor, Dr. Bass, who had examined the plaintiff, to arrive at the medical opinion to which he testified. Defendant then attempted to introduce the letters and reports referred to by Dr. Holder and the plaintiff objected to the introduction on the basis that they were privileged because of the physician-patient relationship. The trial court sustained the objection. On appeal, in reversing the decision of the lower court, this Court said:

> In this case appellants were not aware that Dr. Holder was basing his opinion in part on reports and letters of Dr. Bass until it was discovered by cross-examination. Under these circumstances we are of the opinion that appellants had the right to cross-examine Dr. Holder relative to these reports and letters and to introduce them into evidence if they so desired. In every case where an expert witness is allowed to express an opinion such witness is subject to cross-examination as to the basis of his opinion. We see no valid reason why any different rule should prevail relative to a medical expert. We are not unmindful of the privileged communications statute, and do not hold that appellants have the

> right to put Dr. Bass on as a witness and have him testify over objection of appellee. We do hold that appellant had the right to cross-examine Dr. Holder relative to any matters which he used and considered in reaching his findings and to introduce such matters into evidence if they so desired. The trial court was in error in sustaining the objection to this testimony.

(175 So.2d at 625).

We have concluded that, even if the letters were originally privileged, under the circumstances of this case, the privilege was waived by appellant when the letters were given to Dr. Pineda for the express purpose of his use in preparing his testimony and in basing his testimony that Alexander was insane upon the letters. Under the circumstances the State's expert witnesses were entitled to have and to use the information upon which the defense expert had based his opinion, and were entitled to testify as to their opinions, based in part, on the letters.

Appellant next argues that the conviction should be reversed because Alexander's mother was not permitted to testify that he had told her that Dr. Blissard had told him that he should be committed to a mental institution for treatment. Obviously the proffered testimony was pure hearsay. The trial court properly declined to allow this testimony.

Appellant also contends that hypothetical questions propounded to the State's psychiatrists were improper and prejudicial. However, there was no objection to the questions at trial.

Other matters assigned and argued as error, each of which the Court has carefully considered, are found to be without merit. From the whole record it appears that the case was well and fairly tried and that no prejudicial error warranting reversal was committed. The conviction and sentence appealed from must, therefore, be affirmed.

AFFIRMED.

PATTERSON, C. J., ROBERTSON, P. J., and SUGG, WALKER, BROOM, LEE, BOWLING and COFER, JJ., concur.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JOHN PEYTON ALEXANDER II **PLAINTIFF**

VS. **CIVIL ACTION NO. J91-0005(W)**

DR. LEE ROY BLACK, et al **DEFENDANTS**

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

John Peyton Alexander II was convicted of murder on May 7, 1976, in the Circuit Court of the First Judicial District of Hinds County, Mississippi. He was subsequently sentenced to a term of life imprisonment in the custody of the Mississippi Department of Corrections.

Alexander appealed to the Mississippi Supreme Court, and that court affirmed the conviction and sentence on April 19, 1978. *Alexander v. State*, 358 So.2d 379 (Miss. 1978). Alexander raised eight different assignments of error in the state appeal.

Alexander has now filed the instant petition for writ of habeas corpus, alleging the following grounds and supporting facts, to-wit:

> A. Conviction obtained by a violation of privilege against self-incrimination. In order to keep my attorneys informed of the conflicting emotions I felt about my act, I wrote and mailed certain letters to the law firm representing me. These letters were given to a defense psychiatrist without my knowledge or permission. The State

> read portions of these letters into the record, as did the State's psychiatrists.
>
> B. Conviction obtained by a violation of the protection against double jeopardy. I committed my act on October 4, 1975. The November 1975 term of the Hinds County Grand Jury delivered a no-true-bill and issued a report stating that I was insane at the time the act was committed. I was committed to the Miss. State Hospital at Whitfield. Upon my discharge from the hospital, charges were preferred again a second time.
>
> C. Conviction obtained by a violation of my right to be confronted with the witnesses against me. I was sued in the summer of 1975 by the deceased's husband for "alienation of affections". The court record of the Hind's County Chancery Court proceeding was viewed and read by the State's psychiatrists (alienists). The hypothetical propounded to the state's psychiatrists made reference to this proceeding and were improper and prejudicial.
>
> D. The combination of grounds "A", "B", & "C", individually and collectively, constituted violation of due process rights guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution.

Grounds A and B were not raised on direct appeal by Alexander, nor has he requested post-conviction relief on these grounds from the state courts. Grounds C and portions of ground D were presented to the Mississippi Supreme Court on direct appeal.

The State has responded to the petition by asserting that the three year statute of limitations contained in the Post-Conviction Collateral Relief Act ran on Alexander on

April 17, 1987. Further, the State claims that any motion for relief after that date would be barred unless the petitioner could demonstrate the existence of one of the two exceptions, either newly discovered evidence or intervening legal decisions. The State concludes that such circumstances do not exist, and a return to the state courts by Alexander would be futile. Hence, the State asserts that Alexander has met the requisite exhaustion requirement as to grounds "A" and "B".

The State then contends that all of the petitioner's claims are precluded from review of this court by virtue of the procedural bar. In support of this position, the State cites *Castille v. Peoples*, 489 U.S. 346, 103 L.Ed. 2d 380 (1989); *Teague v. Lane*, 489 U.S. 288, 103 L.Ed.2d 334 (1989); *Harris v. Reed*, 489 U.S. 255, 103 L.Ed. 2d 308 (1989); *Engle v. Isaac*, 456 U.S. 107, 71 L.Ed. 2d 334 (1982); *Wainwright v. Sykes*, 433 U.S. 72, 53 L.Ed. 2d 594 (1977); *Wiggon v. Dugger*, 894 F.2d 1266 (11th Cir. 1990), *cert. denied* ___ U.S. ___, 111 S.Ct. 102 (1990); and *Pruett v. Thigpen*, 665 F.Supp. 1254 (N.D.Miss. 1986), *cert. denied* 481 U.S. 1033, 95 L.Ed. 535 (1987).

We note that in other cases the State has argued that the exhaustion requirement had *not* been met by a petitioner who had not requested an out-of-time appeal under the Post-Conviction Collateral Relief Act and had not shown that he fell under one of the exceptions to the limitation period. Yet, in the instant case, the State asserts that the exhaustion requirement *has* been met since neither of the exceptions can be shown.

The State cites the *Castille* case to support its position that the requisite exhaustion exists. In *Castille*, the defendant directly appealed his conviction to the Superior

Court of Pennsylvania, and that court affirmed. Castille then filed two unsuccessful petitions for allocatur review, which, under Pennsylvania law, may be allowed only as a matter of discretion and only when "there are special and important reasons therefor." *Castille*, 103 L.Ed. 2d at 384. Castille then filed a habeas corpus petition, reasserting federal claims made in the allocatur petitions. The District Court dismissed the petition for failure to exhaust and the Third Circuit reversed, holding that Castille had exhausted his state remedies. The United States Supreme Court reversed and remanded, holding that where the accused's federal claim was presented to the state court for the first time was on petition for discretionary allocatur review by the Supreme Court of Pennsylvania, the claim has not been exhausted so long as the petitioner has the right, under state law, to raise, by any available procedure, the question presented. *Castille*, at 386.

The Court remanded the case, with instructions that exhaustion cannot be based on the petition for allocatur, but that the "requisite exhaustion may nonetheless exist, of course, if it is clear that respondent's claims are now procedurally barred under Pennsylvania law." *Id.* at 380. It is this statement by the court that the State relies upon.

The *Castille* case compels us to find that Alexander has *not* exhausted his state remedies, as he still has a procedure available to attempt to raise these issues with the Mississippi courts. We do distinguish Mississippi's Post-Conviction Relief Act from the Pennsylvania "discretionary review" procedure, as the Mississippi law is not discretionary if one of the two exceptions exist. We also distinguish the act from the Illinois Post-Conviction Hearing Act reviewed in the *Teague* case, which allowed untimely review if "fundamental fairness" mandated review. *Teague*, 103 L.Ed 2d at 347.[1]

It is our opinion that Alexander has *not* met the exhaustion requirement, as Alexander has never sought to have the State's courts review two of the issues he now seeks relief upon. We concede that Alexander will *probably* not meet one of the exceptions for an out-of-time appeal. Yet, we cannot say this with certainty as we have not reviewed the laws of the State of Mississippi to determine if changes have occurred. It is not a decision for the federal courts to make as to whether or not the Mississippi Supreme Court would grant an out-of-time appeal. Holding otherwise would "slight the sovereignty of the state and impinge on the finality of state court judgments", as well as undermining the integrity of the state's accepted procedures. *Coleman v. Thompson*, 501 U.S. ___, 115 L.Ed. 2d 640, 111 S.Ct. ___ (1991); *Young v. Herring*, 938 F.2d 543, 553, n.11 (5th Cir. 1991).

Hence, it is our opinion that Alexander has not met the exhaustion requirement by bypassing the procedure requesting an out-of-time appeal with the Mississippi courts. Although we specifically find that Alexander has not exhausted his state court remedies as to grounds "A" and "B", the State may waive this requirement if it deems further action futile. The State's Answer indicates that it does waive this requirement in Alexander's case.

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[1] Justice Stevens, in his *Teague* concurrence, concluded that the petitioner had *not* exhausted, as the Illinois courts should be allowed to determine whether or not a procedural default had occurred. *Teague*, 103 L.Ed 2d at 366.

The State argues that grounds "A" and "B" are procedurally barred from review in this court because Harris did not raise these grounds on direct appeal to the Mississippi Supreme Court. We agree.

The recent cases of *Coleman v. Thompson* and *Young v. Herring, supra,* are helpful in clearing the confusion that the procedural bar issue has presented in the past. These cases indicate that the previously utilized plain statement requirement of *Harris v. Reed, supra,* comes into play only when the state court may have based its decision on the *merits* of the federal claim. *See, Coleman,* 115 L.Ed. 2d at 659; *Young,* 938 F.2d at 553. The Fifth Circuit has interpreted *Coleman* to conclude that the *Harris* "plain statement" rule needs to be met only in those cases in which the court relies upon a state procedural bar in the face of an overt consideration by that court of the application of federal law to the question at issue. *Young,* 938 F.2d at 554. Further, the requirement of *Harris* only comes into play when the state court *may have based its decision on the merits of the federal claim. Id.* at 553.

The rule requiring a plain statement necessarily applies *only when a state court has been presented with the federal claim. Reed,* 103 L.Ed.2d at 317, n.9; *Teague,* 103 L.Ed.2d at 348; *Coleman,* 115 L.Ed.2d at 659, n.11b. As in *Teague,* Alexander candidly admits that he did not raise grounds "A" and "B" either on direct appeal or collaterally.

Because of the failure to timely raise the claims, Mississippi law would procedurally bar Alexander from having these claims reviewed on their merits. In *Patterson v. State,* 1992 WL 15118 (Miss. January 29, 1992), the Mississippi Supreme Court reiterated the state's law that questions not raised in the lower court will not be reviewed on appeal, especially when the claims are constitutional in nature. *Patterson* at 5, *citing Stewart v. City of Pascagoula*, 206 So.2d 325 (Miss. 1968).

In *Patterson*, the appellant's constitutional claims were raised for the first time on the appeal of the trial court's denial of the appellant's motion for post-conviction collateral relief. The Court clearly stated that these claims were procedurally barred due to the time-bar of the Act and refused to hear them on their merits.

Alexander has waived or forfeited review of the claims in the Mississippi courts under the laws of the State.[2] We find that under the *Teague*, *Coleman*, and *Young* cases, the federal courts are procedurally barred from reviewing the merits of these claims.

In the instant cause, Alexander did present ground "C" to the Mississippi Supreme Court on direct appeal. That court outlined the issue but did not address it because "there was no objection to the questions at trial." 358 So.2d at 387. It is our opinion that this language is sufficient to show that the Mississippi Supreme Court refused to consider the alleged error on its merits due to the procedural default. It is clear that the Mississippi

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[2] *See, Patterson*, at 4, *citing Contreras v. State*, 445 So.2d 543, 544 (Miss.1984) (Appellant did not raise in lower court the constitutionality of statute proscribing crime against nature, and for that reason the question could not be considered on appeal); *Colburn v. State*, 431 So.2d 1111, 1113 (Miss. 1983) (Constitutionality of aggravated assault statute could not be considered for the first time on appeal); *Smith v. State*, 430 So.2d 406, 407 (Miss. 1983) (Constitutional argument not asserted in court below was waived and could not be asserted in Supreme Court).

Supreme Court did not address ground 3 on its merits, but rejected it purely on the failure of counsel to timely object at trial. Certainly, no constitutional review was utilized by the court in addressing the claim. Under the authority of *Coleman* and *Young v. Herring*, we find that this ground is procedurally barred from review by this court.

Ground "D" is a combination of all of the above grounds, and thus it is also barred from review by this court.

We find that all of the claims now presented to this court are procedurally barred, and that no facts in the record exist which would show sufficient cause or prejudice under the law to allow this court to review the claims.

Under the above reasoning, we recommend that the petition for writ of habeas corpus filed by Alexander be denied.

Parties are hereby notified that failure to file written objections to the findings and recommendations contained in this report within ten days from the day of its filing shall bar an aggrieved party from attacking the factual findings on appeal.

This the 23rd day of March, 1992.

s/ Alfred G. Nicols, Jr.
UNITED STATES
MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JOHN PEYTON ALEXANDER II

VS. CIVIL ACTION NO. J91-0005(B)

DR. LEE ROY BLACK, ET AL.

ORDER

(Filed May 5, 1992)

This cause is before the Court upon objections to the Report and Recommendation of the United States Magistrate, after referral of hearing by this Court. The Court, having reviewed the record and court file in this matter, finds that the Report and Recommendation of the Magistrate should be adopted by the Court, with the following changes:

On page 6, line 5 of the Report and Recommendation, "Harris" should be changed to "Alexander."

On page 8, line 6 of the Report and Recommendation, "ground 3" should be changed to "ground C."

IT IS THEREFORE ORDERED that the Report and Recommendation of the Magistrate should be and hereby is adopted as the finding of the Court.

SO ORDERED this the 5th day of May, 1992.

/s/ Charles H. Barbour, Jr.
CHIEF JUDGE

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7320
Summary Calendar

JOHN PEYTON ALEXANDER, II,

Petitioner-Appellant,

versus

DR. LEE ROY BLACK, Commissioner,
Mississippi Dept. of Corrections,

Respondent-Appellee.

Appeal from the United States District Court
For the Southern District of Mississippi
(CA-J-91-0005(B))

(Filed Mar. 8, 1993)

Before POLITZ, Chief Judge, SMITH and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[*]

John Peyton Alexander, II appeals the denial of his application for a writ of habeas corpus. The district court determined that Alexander procedurally defaulted and failed to establish cause therefor. We affirm.

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[*] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

In 1975, Alexander, then a student at Vanderbilt University, spent his summer break working at a country club in Jackson, Mississippi. During the course of the summer he became romantically involved with an older married woman who belonged to the club. The affair came to an abrupt end when her husband learned of it. Alexander returned to school distraught and eventually dropped out. He then returned to the Jackson area and sought work at other country clubs without avail. He felt his applications were being unfairly rejected due to the husband's intervention. Angered, Alexander began sending copies of love letters received in the tryst to members of the country club. When his paramour sued him, Alexander secured a handgun, went to the country club, and shot her to death. A Mississippi jury convicted Alexander of murder and the Mississippi Supreme Court affirmed the conviction and life sentence. Alexander did not pursue further relief in the state courts.

Alexander commenced the instant action in 1991. He seeks federal habeas relief pursuant to 28 U.S.C. § 2254 for errors which he claims occurred in his trial. Before reaching the merits of his claim, we must determine, as did the district court, whether those claims still admit of plenary review. The district court determined that Alexander's failure to pursue relief from these asserted trial errors in Mississippi caused a procedural default. Alexander complains of this determination, as well as the procedures employed below.

Analysis

We initially address Alexander's claims of procedural error. He contends that the magistrate judge and district judge, to whom his habeas petition first was assigned, failed to recuse themselves in a timely manner. He also claims that he was misled by the court into thinking that the judge's law clerks had been appointed counsel for him and that he wrote letters detailing his legal strategy to them before his mistaken view was corrected. Alexander did not raise these contentions in the district court and, lacking any development below, we cannot consider them.[1]

Alexander first asserts that his privilege against self-incrimination and his right to effective assistance of counsel were violated when letters he wrote to his attorneys were given to defense and state psychiatrists. Next, he assails his conviction as having been obtained in violation of his sixth amendment right of confrontation. Lastly, he argues that the double jeopardy clause proscribed his prosecution after a grand jury found him insane. Before reviewing these questions we must consider the effect of Alexander's failure to first raise them in state court.

We are obliged to find the claims procedurally defaulted where the state courts have so held,[2] or where it is plain that given the opportunity they would do so.[3] While the Mississippi courts have not expressly held that these claims are procedurally defaulted – for the rather obvious reason that they have never been presented to those courts – we think it clear that they would so hold if afforded an opportunity. The Mississippi Uniform Post-Conviction Relief Act[4] provides a three-year statute of limitations. That Act provides exceptions in cases where a movant establishes that an intervening decision of the Supreme Court of Mississippi or of the United States would have adversely affected the outcome of his case, or that newly discovered evidence, not reasonably discoverable at the time of trial, would be practically conclusive of a different outcome at trial.[5]

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[1] *United States v. Smith*, 915 F.2d 959 (5th Cir. 1990).

[2] *Harris v. Reed*, 489 U.S. 255 (1989).

[3] *Teague v. Lane*, 489 U.S. 288 (1989)

A habeas petitioner is not free to bypass an available and adequate state remedy in favor of plenary federal review. There are only two instances in which the federal courts may overlook a procedural default and proceed to weigh relief on the merits: first, where the petitioner can demonstrate cause for the failure to raise the issue previously and prejudice resulting therefrom; second, where failure to consider the claim would, despite its untimely nature, result in a fundamental miscarriage of justice.[6]

We are mindful, but dubious, of Alexander's explanations for his failure to raise these arguments at trial: that the prosecution's creation of a circus atmosphere in which he was "tried in the papers" caused him to lose his sanity and that his attorney's ostensibly ineffective assistance provided at trial caused him to forgo state remedies. The district court rejected these allegations. While likewise circumspect, we also note that Alexander has wholly failed to present any explanation, fanciful or otherwise, for his failure to raise the same arguments in a collateral proceeding. Nor do we find a basis for concluding that our failure to address these claims would result in a "fundamental miscarriage of justice."

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[4] Miss. Code Ann. § 99-39-5 (Supp. 1992).

[5] Alexander has brought no such decision to our attention, nor are we aware of one.

[6] *Saahir v. Collins*, 956 F.2d 115 (5th Cir. 1992). (Fundamental miscarriages warranting review of defaulted claims are quite limited, typically involving constitutional violations which probably resulted in the conviction of an innocent man.)

Finally, Alexander contends that the cumulative effect of the asserted errors warrants federal habeas relief. This court recently addressed a similar contention in *Derden v. McNeel.*[7] There we determined that the cumulative effect of errors may, on occasion, warrant relief under the due process clause. Each error so combined, however, must be of constitutional dimension *and* each error must otherwise be subject to habeas review. As noted, none of Alexander's arguments are properly before us on habeas review.

The judgment of the district court is AFFIRMED.

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[7] No. 90-1230 (5th Cir. Dec. 2, 1992) (*en banc*).

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7320

JOHN PEYTON ALEXANDER, II,

Petitioner-Appellant,

versus

DR. LEE ROY BLACK, Commissioner,
Mississippi Dept. of Corrections,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi

ON PETITION FOR REHEARING

(Filed April 13, 1993)

Before POLITZ, Chief Judge, SMITH and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ Henry A. Politz
United States Circuit Judge

APPENDIX F

United States Constitution

Article 1, Section 9, Paragraph 2

The privilege of the writ of ***habeas corpus*** shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

United States Constitution

Amendment V

No person shall be held to answer for a capital, or otherwise infamous, crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life and limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for pubic use, without just compensation.

United States Constitution

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

United States Constitution

Amendment IX

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

United States Constitution

Amendment XIV, Section 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Mississippi Rules of Appellate Procedure

Rule 17(f)

(f) Reconsideration Not Permitted. Neither an acceptance nor a rejection of a petition for certiorari shall be subject to further pleading by a party for rehearing or reconsideration. Prior to final disposition, the Supreme Court may, on its own motion, find that the petition for certiorari was improvidently granted and may dismiss the certiorari proceeding.

Miss. Code Ann., (1972) § 99-13-5. Disposition of accused when grand jury finds him to be insane or feeble-minded.

When any person is held in prison, or on bail, charged with an offense, and the grand jury shall not find a true bill for reason of insanity of the accused, or for reason of feeble-mindedness of the accused, which they judge to be such that he or she was not responsible for his acts or omissions at the time when the act or omission charged was committed or made, the grand jury shall certify the fact to the circuit court, and shall state whether or not such insane or feeble-minded person is a danger to the security of persons and property, and the peace and safety of the community, and if the grand jury report such insanity or feeble-mindedness, and such danger, the court shall forthwith give notice of the case to the chancellor, or to the clerk of the chancery court, whose duty it shall be to proceed with such insane person and his estate, or such feeble-minded person, according to the law provided in the case of persons of unsound mind or feeble-minded persons.

APPENDIX G

MEMO TO: Honorable Jim Norris, Attorney

FROM: Kathy McKnight, Executive Secretary [KMS]

DATE: May 3, 1994

Below, is the transcript for John Alexander's #X42492 revocation hearing on 10/27/86. Chairman B.C. Ruth presiding. I'm not familiar with other members present.

Chairman:
Did you have a preliminary hearing

John:
Yes sir

Chairman:
You were arrested and charged on 9/26/86, found guilty in Forrest County Justice Court on the crime of simple assault attempt to create fear under Section 97-3-7 of the Mississippi Code. Are you guilty?

John:
Yes sir

Chairman:
Do you understand the charges?

John:
Yes sir

Chairman:
Do you have anything to say or do you want your attorney to talk for you.

John:
Well, I would like to say that I was not on my medication when the crime happened. I'm on my medication now.

Chairman:

Do you remember when your mother was up here the last time we paroled you? Was the question asked or did you make the statement that you (mother is present), would see that he would take his medication?

Woman's voice:

Yes

Chairman:

I believe that the one thing that turned the trick, sort of speak [sic].

Woman's voice:

Yes. I believe that too and I did make every effort to get him to a psychologist. I went with him to a psychologist to try to get him to get back on his medicine.

Woman #2 voice:

I talked to John's psychologist, Dr. Montgomery. He also had a counselor Pat . . . (can't understand name) [sic] at Pine Belt Mental Health Center and there was a psychiatrist, Dr. Burgess. I have not talked to Dr. Burgess in regards to his medicine situation, however I have talked to Dr. Montomery [sic] and Pat??. [sic] I think from their understanding was that sometime around in the Spring or Summer, John had talked to several of them about the possibility of getting off his medication because for the hazardous side-effects it can have. They discussed it with him and I have not talked to Dr. Burgess but it's my impression that Dr. Burgess was monitoring that.

I do have a letter here from Dr. Montgomery. He knew that John had discontinued his medication. They was not thrilled with the idea, but they did not tell him that he could not do it and the ideas was that if he was monitored so that if any problems like the situation came up, it could be handled.

According to Dr. Montgomery, he saw John for approximately a month after he discontinued the medication and it was no problem. Dr. Montgomery told me it was not unusual for somebody to discontinue their medication in that way and may not be a problem for a while apparently . . . for some individual benefit from the medication.

Apparently, both Dr. Montgomery and Pat ?? [sic] left the Pine Belt Mental Health Center at approximately the same time due to budget cuts around August. That left John without the two people who would had been most likely in turns [sic] of the treatment situation, to have picked up on any difficulty.

I really don't know what the situation was with Dr. Burgess. Both Dr. Montgomery and Mr. ?? [sic], by the way, said if the board would like to talk to talk [sic] with them and with John's permission, they would be delighted to recap what went on.

Anyway though, the way I understand it, John did however . . . start having some problems and at that time, he was staying [sic] his father Mr. Alexander who's at this hearing

John was placed at the Pine Grove Recovery Center which is the treatment center for A/D abusers. He was discharged from there and his father I think was fearful of that because he was beginning to act increasingly more roudy, [sic] that some problem would arise and that maybe it would be better to do something at this point before it got too bad. So his father preferred the charges against him over in the Justice Court of Forrest County. The actual assault that we're taking about were. . . .

Man's voice:

I think the charges that I placed against my son originally set forth in the affadavit [sic] that I signed.

If there are any questions to that, I'll be glad to answer them.

Woman's voice:

I think what John did was to place his family in fear. They was afraid that something would happen and they acted promptly to keep that from occurring. Frankly, I think myself, coming into this from sort of a somewhat outsider's point of view, is that it appears to me that it has worked pretty well and perhaps the way it should work when you start having problems, they acted before it could get out of hand. This was a Justice Court conviction. The time for his appeal has not elapsed and he has signed an appeal bond today to appeal that conviction to the county court. I did not get into this case until late this week, so that [sic] why I have not had a chance to talk to Dr. Burgess because he has been out of town. It seem [sic] to be my impression from talking to the people and talking to his parole officer and talking to his parents, that he did extremely well while he was off his medication. This problem arose when he attempted to discontinue it. It was rather unfortunate that had to coincide with Dr. Montgomery and Mr. Pat ?? [sic] leaving. I had talked to Dr. Whellan here and Dr. Whellan tells me that he feels that John has re-stablelizeds [sic] on his medication.

I myself would not attempt to predict what any human being would do under any circumstances, but it does. . . . I'm not trying to tell the Parole Board what to do. Dr. Whellan do [sic] not seem to have much problem to talk to the Parole Board if they wanted to talk to him.

With John going to Whitfield to make sure he is doing O.K. And perhaps considering some sort of release at that time, I did want to make the board aware that we do intend to appeal that conviction, not so much for the purposes of today as just for later on down the line if the board did decide to release him again, I think it would be much better for him not to have a conviction on his record.

We would like to work with the board to figure out some way that John could be released with some assurance that he would get the proper medication and the medical treatment that he needs.

Chairman:

Would either one of your like to make a statement at this time

Woman's voice:

I would like to have John released to have some treatment rather than have his parole revoked.

Chairman:

John, do you have anything else you would like to say?

John:

I just want to say that I'm sorry for all the aggravation, hassle, fear and expense that I have caused.

Chairman:

Would the board like to ask any questions?

Woman's voice:

I did bring a transcript of his grades if you would like to look at how well he's been doing in school. It [sic] just the last semester, thats all I have available. He has been doing very well. He lacks just one semester from completing his school and would like to look at the letter that Dr. Montgomery wrote?

One thing, I don't know if it would be possible to perhaps continue the revocation hearing with the . . . that he go to Whitfield until such time as we could get a little better medical perspective although Dr.

Whellan said That would confer with the board if they had any questions.

I wish really that we had a better definite place that we could put him at this point, but we were kind of pressed for time. Dr. Whellan said that occasionally, the board does parole people to Whitfield perhaps. . . . medication problems. It does seems that he does well with his medication.

Woman's voice:
As long as he is taking his medication, there has not been any problems.

Man's voice:
How long was he on parole?

Woman's voice:
2 years and a couple of months.

Woman's voice:
During the time John was on parole, Dr. Montgomery pointed out in a letter that he had written that John has displayed no signs [sic] schizophrenic disorder while he was on this medication. Mr. Pat ?? [sic] told me the same thing. Unknown about Dr. Burgess findings.

He has done extremely well in school. I think the board already knows that.

Man's voice:
Mr. Chairman, would you like for them to step outside so the board can discuss this.

Chairman:
Just a minute

Woman's voice:
I did also talk to his parole officer, Mr. Burnell, who also thought John had done real well during the time that he had been out on parole. John was faithful

about reporting on time. He even reported sometimes when he didn't have to. This can be confirmed by parole officer if needed.

Woman's voice:

I wonder if it had been written on his release papers that he continue taking medication.

Chairman:

Any instructions that is given (written or not), they must carry those instructions out.

Woman's voice:

I was originally under the impression that he has . . . discontinued his medication without consulting anyone before during it. It appeared to me after I talked to Dr. Montgomery and Mr. Pat ?? [sic], that he had discussed it quite extensively with them and they had not disapproved it. I think it was sort of their position though that it was a psychiatric medical decision. It's my impression from talking to Dr. Montgomery that Dr. Burgess was in fact monitoring that but I can't say for sure.

Woman's voice:

But he wasn't there long enough to monitor it to the point that he needed to gradually start giving him more medication.

Woman's voice:

Well, I think the sequence of events was that around May or June, John discussed this with those three people, the amount of medication he was taking was relatively small and as you can see from Dr. Montgomery's letter, he appeared to be stabled on that amount and so they were concerned naturally about the notion of him trying to do away with the medication, but they didn't disapproved [sic] it.

Chairman:

The doctor did not tell him that he didn't have to take the medicine?

Man's voice:

No

Woman's voice:

Dr. Burgess! I don't know. I got the impression from taking [sic] to Dr. Montgomery that Dr. Burgess' position is basically the same as theirs, if they were willing to give it a try to see how it worked, but I have not talked to Dr. Burgess and I cannot state that categorically. Dr. Montgomery was however, aware that he was not taking his medication and he seemed to be doing O.K. Up until the point that Dr. Montgomery & Mr. Pat?? [sic] left the Mental Health Center, and they discontinued the group that John had been participating in because of financial consideration. It is really my own personal feelings that had that not happened, it probably wouldn't have gotten to the point where John's father had to take the action that he did.

Chairman:

Does the board want to discuss this case?

Woman's voice:

I don't know. It's kind of a hard case. Here's a case where a young man is probably going to have to be on medication for the rest of his life and its going to take some awfully close supervision in it, and its not going to be something his mother and father can do. Its going to be someone that's qualified to handle his case and I don't know if they are going to do that.

It seems to have been working up until these, you know.

Chairman:

Well the psychologist was aware of him being off the medication and thought it was in remission.

Woman's voice:

Yeah, but what happened, the doctors left town and they were not there long enough to know. . . . You see when you're taking medicine, you have so much in your system, you can do without it for a long time but then when your system get [sic] totally free of the medicine, you start having problems, and thats when the doctors were gone.

Woman's voice:

Yes, that's when the doctors [sic] Left

Man's voice:

You don't know whether they approved of it or not of him dropping the medication.

Woman's voice:

They neither approved or disapproved, they were willing to try it. . . .

Chairman:

This was his suggestion or decision to get off of it, not the doctors?

Woman's voice:

It was his decision and they were willing to give it a try basically what I got out of it and it obviously did not work.

Woman's voice:

I don't think it [sic] would of been anything wrong with the try, it was just the fact that there was nobody there when it started to not work.

Chairman:

And what length of time was that? from August until what?

Woman's voice:
From August until, well June until August

Woman's voice:
June 29th

Chairman:
3 months

Woman's voice:
He discontinued his medication, I believe it was on the 29th of and I think Dr. Montgomery saw him through August of 1986. And then these charges were.... I guess the affidavit would say the day the charges occurred on. They....

Man's voice:
He had lived with you all this time Mr. Alexander?

Man's voice:
John was a student at Mississippi Southern University. He stayed in the domitory. [sic] on occasions, he would have a semester break, they closed the domitory.... On those occasions, when he wasn't registered in the college dorm, he lived in the home I lived in Jackson.... Hattiesburg.

Chairman:
Do you all want to ask any other questions? Suppose you all step out just a minute and let us discuss this little further.

Everyone's out of the room now. Board is discussion [sic] the case.

Chairman:
Have a seat please. Mr. Alexander did want to come back in?

Woman's voice:
He's in there with Mr. Lucas. He talking to Mr. Lucas

Chairman:

As you know, we've discussed this case and like . . . Sykes said, it is a hard case. In our discussion, it is our opinion that we are going to revoke John for one (1) year and request that Dr. Whellan put him under his supervision and whatever Dr. Whellan . . . we cannot parole him to Whitfield. We can't do, we can't do that and whatever Dr. Whellan sees fit and that would be perfectly alright with the board and we will request a report from Dr. Whellan when John comes back before us the next time.

Man's voice:

Did you want them to understand that . . . are you saying now that the board will accept the recommendation from Dr. Whellan?

Chairman:

No

Man's voice:

can't understand what he is saying on tape.

Chairman:

Right. We will get the report, we will look at it but it will be up to the board at [sic] time.

Woman's voice:

Let me make sure that I understand what. . . . When you say you're going to revoke him for a year, that means he will not come up for consideration for parole again until a year's time.

Man's voice:

Right

Man's voice:

A year from this month. Next October he will come back before the board.

Woman's voice:

He will come back before the board in such time he will be considered and we could request whatever medical. . . .

Man's voice:

Mr. Alexander wants to say something Mr. Chairman

Man's voice:

Part of my question was answered by her, not repeating the clarification . . . that this act is not that John is concerned directly. . . . He may appear. . . .

Man's voice:

No, he will come back before us in a year.

Man's voice:

He will be back in one year.

Man's voice:

Some people who are concerned about John, was the opinion that if his parole was revoked today, it would be final. . . . I'm going to be very brief that if some medical science should produce a drug that will alleviate this to demonstrate, I, would expect my son to a fair hearing as if this had not occurred, because he is not guilty of the simple act I charged him of spending the rest of his life in prison if he can cope in [sic] social and work world we all have to live in.

Woman's voice:

I think Mr. Alexander was concerned today to make clear to this board that he took this action in filing this assault charge as a preventative measure that he was not concerned to have John charged with the assault charge.

Chairman:

That, we understand

Woman's voice:

Frankly, I think the board and the family should look upon this as a pretty much a success story because nothing bad did happened [sic] and I think it didn't happen because the family took the action it did.

Man's voice:

Is there any direction you can give me that any resources available that we could offer any help to John during the year.

Man's voice:

I think since your attorney has talked to Dr. Whellan, she might take this to Dr. Whellan. (That's the end of side 1 of tape.)

Side 2/Chairman:

Dr. Whellan's decision. I'm not sure. See we have no control where these men are housed, whether [sic] be in the hospital or out in the camp or what. That's up to the doctors.

Woman's voice:

I would assume Dr. Whellan feels he's pretty well stabled on the medication at this point, otherwise, he would not have been transferred to Rankin Facility.

Chairman:

Alright! that's the decision of the board. Any other questions?

APPENDIX H

"The Clarion Ledger"
newspaper

Jackson, Mississippi

Nov. 26, 1975

State To Commit Suspect

By TIM O'NEIL
Clarion Ledger Staff Writer

A man formerly charged with the Oct. 4 shooting of a woman at a Jackson tennis center was to be committed today to the state hospital at Whitfield after a Hinds County Grand Jury declared him insane.

John Peyton Alexander II, 20, of 104 S. Park Drive, Tuesday was ordered committed to the hospital by Hinds County Chancery Court Judge George Haynes. Alexander was charged with murder in connection with the death of Harriet Robinson, 38, of 4225 Canterbury Court, but the grand jury Monday ruled him not responsible for his acts at the time of the shooting.

Alexander allegedly shot Mrs. Robinson several times at the Parham Bridges Tennis Center. He turned himself in to police later that day and was charged with murder.

Hinds County Sheriff's chief criminal deputy Sam McGee said Alexander will be transported to the maximum security unit of the Whitfield hospital, where he will undergo a court-ordered 20-day period of treatment.

The grand jury refused to indict Alexander after hearing testimony last Friday from two psychiatrists who tested and examined Alexander while he was in the city jail awaiting action in his case. Defense attorney Sebastian Moore said Tuesday he ordered the examinations and made the results the basis of his case to the grand jury.

Although the grand jury found Alexander insane, it did state in its report issued Tuesday that he "is a present danger" and requested the chancery court to process the case. Chancery court records include a statement from the two psychiatrists declaring Alexander mentally ill and in need of treatment.

In getting the grand jury action, Moore used a rarely-cited statute that permits a grand jury to transfer insanity cases to the chancery court. He said he had the psychiatrists testify to the grand jury because he considered it the best way to have Alexander committed for psychiatric treatment.

But Dist. Atty. Ed Peters said Tuesday the observation at Whitfield may aid him in prosecuting Alexander some time in the future, assuming he is released from the hospital. He said Alexander's possible release after treatment might make him capable of standing trial, but only speculated that a trial might take place.

"He will return and stand trial or else he'll stay in Whitfield until he dies or something," Peters said. He said he could return to a grand jury in the future and present his evidence against Alexander again.

Peters, however, said he did not oppose Moore's move to bring his claim of insanity to the grand jury. "I was not opposed to any chance the state might have to have a psychiatric examination of the man (Alexander)," he said.

He said Moore's medical testimony would hamper any prosecution now because prosecutors don't have any medical evidence to counter Moore's insanity claim. Peters said he believed grand jury members were given evidence showing Alexander "is guilty, but I could not stop Moore's (medical) witnesses."

Although Moore's use of the grand jury statute is uncommon, high legal sources said Peter's apparent move not to oppose committment to Whitfield could aid prosecutors in a future trial. The sources said a release of Alexander from the hospital in the future could be used by prosecutors to counter any defense claims of the defendant's inability to stand trial.

Moore, however, indicated that Alexander will remain in the hospital for a considerably longer period than the 20-day observation, but declined to estimate the length of his stay. He said Alexander wants treatment for his mental condition.

Moore said the two psychiatrists, Dr. Mario Pineda and Dr. Thomasina Blissard, examined Alexander "at length" soon after he was put in jail. A psychologist also gave Alexander a battery of tests that were studied by the psychiatrists.

Moore said he decided to defend Alexander on grounds of mental condition the day of the shooting, and decided later he had enough testimony from the psychiatrists to go directly to the grand jury. "We only took this route when we knew we had it won this way," he said.

November 26, 1975

James Brantley, Esquire
Donald C. Guild, M.D.
Mississippi State Hospital
Whitfield, Mississippi 39193

Re: John Peyton Alexander, II

Dear Mr. Brantley and Dr. Guild:

In view of the story about this case in the Clarion Ledger this morning, and in view of Mr. Moore's conversation with Dr. Guild today, we hereby request that no one at Whitfield talk with, question, interrogate or evaluate Mr. Alexander unless a lawyer from our office is present. We are earnestly interested in treatment for Mr. Alexander, and are not making this request in order to be obstructionists. We simply feel that until the dust settles and it is clear for what purpose Mr. Alexander will be examined, we want to make sure that Mr. Alexander is not compelled to be a witness against himself.

All three lawyers in this office will be out of town until Monday, December 1, but we will be available at any time whatsoever after that, and we will be happy to talk with either one of you about this matter so as to reach an agreement which everyone is comfortable with.

Thank you very much for your help in this matter.

Sincerely yours,

Thomas J. Ginger

TJG:jhs

APPENDIX I

ACTION OF THE PAROLE BOARD

NAME Alexander, John NO. X42492
LOCATION 20 DATE 4-25-95

Inmate present for hearing ( ) Yes ( ) No

☐ PAROLE to ____________________________

Pending:
- ☐ Completion of A&D Program at Parchman
- ☐ Completion of Pre-Release Program at Parchman
- ☐ Compact Acceptance
- ☐ Literacy Testing and Training as needed
- ☐ Completion of New Hope Drug Program at CMCF
- ☐ ______________________

☐ TRANSFER TO PAROLE FROM _____________
☐ RESCIND PAROLE __________________________
☑ DENIED PAROLE. CONTINUED
____ ( ) Month(s) 1 (✓) Year(s); ( ) Duration

Next Hearing Date __________

DO NOT RELEASE UNTIL ________________

SPECIAL CONDITIONS WHILE ON PAROLE

( ) Must attend alcohol and drug treatment program.
( ) Must attend AA as directed.
( ) Must attend Mental Health for _____________ counseling as directed
( ) Must not use alcoholic beverages.
( ) Pursue GED
( ) _____________________________

RESIDENCE PLAN

____
____
____
____
____

Phone: __________________________

Reasons Favoring Parole

( ) Has served sufficient portion of sentence.
( ) Good prison record.
( ) Good risk assessment.
( ) Detainer/other sentence to serve.
( ) Recommendation by prison authority.
( ) Recommendation by law enforcement official.
( ) Successfully completed set-off.
( ) Needs supervision prior to discharge.
( ) Community support.
( ) Has employment or adequate provisions for maintenance and care.
( ) The Board believes (he/she) is able and willing to fulfill the obligation of a law-abiding citizen.
( ) Psychiatric/psychological evaluation indicates reasonable chances of success on parole.
( ) Mitigating circumstances surrounding crime.
( ) Participating in rehabilitative programs.
( ) ____

Reasons For Denial

1. **Serious nature of offense**
2. Number of offenses committed
3. Police and/or juvenile record
4. Prior felony conviction(s)
5. Additional charges pending/detainer
6. Prior misdemeanor conviction(s)
7. Probation unsatisfactory/violated

8. **Parole unsatisfactory/violated**
9. Other conditional release unsatisfactory/violated ____
10. History of violence
11. History of drug or alcohol abuse
12. **Psychological and/or psychiatric history**
13. Crimes committed while incarcerated
14. Escape
15. Institutional disciplinary reports
16. Recent/pending disciplinary action
17. Unsatisfactory work rating
18. Failure to participate in or complete rehabilitative programs
19. Poor risk assessment
20. Poor prognosis according to psychological/psychiatric evaluation
21. **Community opposition**
22. Failure to comply with board's instruction
23. Further investigation required
24. Insufficient time served
25. You requested not to be paroled
26. Inadequate arrangements for employment and/or residence
27. We are of the opinion that the social, mental or educational resources are lacking which are necessary to function successfully on parole
28. **The Board believes the ability or willingness to fulfill the obligations of a law-abiding citizen is lacking, pursuant to Section 47-7-17 of the Mississippi Code Annotated as amended**
29. Other ________________________________

FOR BOARD USE ONLY

Offense Details ____________________
Social History ____________________
Criminal History ____________________
Conduct/Employ____________________
Medical Info ____________________

Psy. Report ______________________
Victim's Input ______________________
Elig. Det./Records ______________________
Risk Matrix ______________________
If sex offender; psy. within one year__________
If capital offense; legal advertise __________
Other ______________________
VOTE:
For parole ______________________
Against parole ______________________

NOTES

____
____
____
____

Copies

White – Parole File
Yellow – Records File
Pink – Parole Board
Goldenrod – Inmate

INFORMATION NEEDED PRIOR TO NEXT HEARING:

( ) Psychiatric/Psychological Evaluation
( ) Conduct Report
( ) Clarification on Eligibility
( ) Post Sentence/Details of Crime
( ) RAP Sheet
( ) Needs to be Interviewed
( ) Proof of Advertisement
( ) ______________________
INSTRUCTIONS: ______________________

Rev. 04-94 Recorded By /s/ MB

____

APPENDIX J

Mississippi Department of Corrections
Parchman, Mississippi 38738
[LOGO]
(601) 745-6611

January 27, 1997

To Whom It May Concern:

Re: John P. Alexander, #30021 – Unit 23

John has been under my care since I came to the Department as the Mississippi Department of Corrections Psychiatrist in July, 1989. Prior to his entry into the system John had been diagnosed as suffering from a schizophrenia disorder and had been under treatment for that during his entire stay here in the prison. For several years now John has been treated with monthly injections of Haldol Decanoate. This is a long acting form of Haldol which is a anti-psychotic medication. The medication is suspended in oil which means that it is slowly absorbed and provides a therapeutic level of Haldol for a month at a time. John has been very faithful in taking his medication as ordered. He has done extremely well on this medication and as long as he continues to take his medicine I would anticipate that he will do fine wherever he is. One potential consequence of the medication is some possible liver damage however, we have monitored John for his problem and he has no evidence of liver damage up to this point. He is comfortable taking the medicine and I feel certain that he would continue to take the medication if he were back in the community.

If I can provide any additional information concerning inmate Alexander's condition or questions concerning the medication that he is taking, I will be glad to do so.

Sincerely,

/s/ Stanley C. Russell/dct
Stanley C. Russell, M.D.
Staff Psychiatrist & MDOC Medical Director

SCR:dct
pc: file

J-3

SICK CALL REQUEST

PART A: (To be completed by Offender)

Date: 8/31/2000

Offender's Name: John P Alexander MSP# 30021

DOB 12/30/1954

Age 44

Housing Unit: 20 Allergies: IODIDE IVP

Work Assignment: WELCOME CENTER

Work/School Hours: 7:00-11:00 AM

Medical Complaint: I WOULD LIKE TO KNOW THE RESULTS OF MY RECENT BLOODWORK. HOW IS MY CHOLESTEROL? HOW ARE MY LIVER ENZYMES? PLEASE GIVE ME FEEDBACK AS TO NORMAL RANGES. PLEASE WRITE THEM ON THIS FORM; AND PLEASE DO NOT CHARGE ME FOR THIS REQUEST.

How long have you had this problem?

Hours ______ Days ______ Weeks ______

PART B: (To be completed by medical personnel – DO NOT WRITE BELOW THIS LINE)

Medical Reply: Cholesterol 228 (normal range 144-200) (mildly elevated)

Liver enzymes - SGOT 26 (normal range 0-34) (normal)

- SGPT 33 (normal range 5-30) mildly elevated

These are only mildly elevated –overall lab work looks good.

/s/ Phelon, NP 9/6/00

Medical/Nursing Staff Member's Signature DATE

☐ Charge

☒ No Charge

I acknowledge that it is the policy of the Mississippi Department of Corrections (MDOC) to apply a financial charge for medical services received by inmates in such cases wherein said medical services are not the result of a medical emergency, a requirement of the MDOC, and/or a member of the MDOC's medical, dental, or psychiatric department's initiation.

I understand a minimum fee of Three Dollars ($3.00) shall be applied for sick call requests which are not in the nature of an emergency.

/s/ John P Alexander
Offender's Signature

8/31/2000
DATE

WHITE – MEDICAL
CANARY – INMATE'S ACCOUNT
PINK – INMATE'S COPY

J-5

Sensitive Placement

MISSISSIPPI DEPARTMENT OF CORRECTIONS STAFF REQUEST FOR INMATE RE-CLASSIFICATION

NAME Alexander, John DOC# 30021 UNIT 20

UNIT TRANSFER FROM 20 TO 20

INCARCERATION PROGRAM U/32 – Laundry
TO Visitor Center

CUSTODY CHANGE FROM MORA
TO MORA

RECLASSIFICATION ( ) ______________________

JUSTIFICATION: **Offender is needed to work at Visitor's Program.**

/s/	S. Moore Requestor	UNIT ADMINISTRATOR	6-15-00 Date
/s/	J. Parker Griffin Requestor	UNIT CASE MANAGER	6-15-00 Date
/s/	Donnie Berryhill Requestor	PRESENT WORK SUPERVISOR	6-15-2000 Date
/s/	Shirley Thomas Requestor	NEW WORK SUPERVISOR	6-15-00 Date

RECORD CHECK PERFORMED BY: J. Parker Griffin

via computer print out 06/09/00

RECEIVED 10/03/86 AGE ___ RACE Wh/M

OFFENSE(s) Homicide

TERM Life

COUNTY Hinds DATE OF SENTENCE 5/07/77

SENTENCE BEGIN 10/4/75 CONVICTIONS 01

PRIOR CONFINEMENTS 00

CUSTODY MORA DATE 07/11/99

CLASS _____ DATE _____

ESCAPE DATE NR RETURN DATE ___

ESCAPE FROM NR

EVALUATION _______

VIOLATOR Par Rev Alleged

DETAINER WITH WHOM NR

MEDICAL CLASS I

MEDICATIONS Haldol/Gets injection at hospital once a month

W/R DATE: N/E

PAROLE DATE: CNTD 2 yrs/04/2000

DISCHARGE DATE: Life

NO. OF DISCIPLINARIES 1

( ) MINOR ( ) SERIOUS ( ) MAJOR

LAST RVR DATE 01/27/99

ADDITIONAL COMMENTS/INFORMATION __________

EDUCATION: College

FAMILY: Laurel, MS

SKILLS: Musician, Cook, Laundry

ADTC: 1977

RED TAG: denied

GANG/ORG:denied

NEGATIVE DRUG SCREEN RESULTS 7/7/00

CLASSIFICATION COMMITTEE ACTION

/s/ John Alexander
Signature of Inmate

DATE 7/11/00 INTERVIEWED (X)
RECORD INTERVIEWED (X)

TAPE# I SIDE II SECTION 000-115
07 11 EC

REASON FOR NO AND/NO REMARKS

YES /s/ Carlize Coleman Mitchner [Illegible]

NO ________________________

COMMITTEE	COMMITTEE
(X) APPROVED	( ) DISAPPROVED

/s/ Charles Hampton
CLASSIFICATION DIRECTOR

DATE 7-11-00

MISSISSIPPI DEPARTMENT OF CORRECTIONS
STAFF REQUEST FOR INMATE CLASSIFICATION

NAME Alexander, John DOC# 42492 UNIT 20

UNIT TRANSFER FROM 20 TO 20

INCARCERATION PROGRAM Parchman Band

TO Clerk – Laundry

CUSTODY CHANGE FROM A

TO A

INITIAL CLASS CHANGES ( )
OR RECLASSIFICATION (✓)

CLASS CHANGE IV TO III EFFECTIVE DATE N/A

CLASS CHANGE III TO II EFFECTIVE DATE N/A

CLASS CHANGE II TO I EFFECTIVE DATE N/A

JUSTIFICATION: Offender request job change.

/s/	A. Daves Requestor	UNIT ADMINISTRATOR	10-1-94 Date
/s/	G. Braggs Requestor	UNIT CASE MANAGER	10-3-94 Date
/s/	T.V. Chandler Requestor	WORK SUPERVISOR	10-3-94 Date

RECORD CHECK BY: Braggs/comp

RECEIVED 10-3-86 AGE 39 RACE W/M

OFFENSE Homicide TERM Life

COUNTY Hinds

DATE OF SENT. 5-7-77

SENT. BEGIN: 10-4-75 CONVICTIONS 1
CONFINEMENTS 00

J-9

CUSTODY A DATE 12-22-86

CLASS 1 DATE 11-22-86

ESCAPE 0 RETURN ______

EVALUATION ~~PAR REV ALLEGED~~

VIOLATOR Par Rev Alleged

(0) DETAINER ( ) DIET LINE

GENERAL CONDITION OR DUTIES M/CI

W/R DATE: 99/99/99

PAROLE DATE: 6-95

DISCHARGE DATE: Life

DISCIPLINARIES 0

TIME & DATE _____

CLASSIFICATION COMMITTEE ACTION

/s/ x John P Alexander
Signature of Inmate

DATE 10-20-94 INTERVIEWED (X)
RECORD INTERVIEWED (X)

TAPE# 102094 SIDE A SECTION I

REASON FOR NO AND/OR REMARKS

YES /s/ Waller Land Banyard Houston

NO ________________________________

COMMITTEE COMMITTEE

(X) APPROVED ( ) DISAPPROVED

/s/ Lawrence Henderson 10/20/94
CLASSIFICATION DIRECTOR Date

APPENDIX K

List of Court Cases

Hinds County Circuit Court	No. 0-261
Hinds County Chancery Court	No. MSH-76
Forrest County Justice Court	
Forrest County Court	No. 15,658
Sunflower County Circuit Court	No. 91-2312
Supreme Court of Mississippi	No. 50035
Supreme Court of Mississippi	No. 51093
Supreme Court of Mississippi	No. 92-KA-0010
Supreme Court of Mississippi	No. 2000-CP-00278
Court of Appeals for Mississippi	No. 2000-CP-00278-COA
United States District Court for the Southern District of Mississippi, Jackson Division	No. J91-0005(W)
United States Court of Appeals For the Fifth Circuit	No. 92-7320
Supreme Court of the United States	No. 93-5230 (A-388)
Supreme Court of the United States	No. 95-8086

APPENDIX L

RELEVANT INFORMATION

Statement Regarding Bringing My Body Before The Court

I would like this Honorable Court to issue a writ commanding that my body be brought before the Court in order that the Justices may observe my affect and my demeanor and witness that I am an articulate, reasonable, rational and sentient human being.

Also, in light of the CERTIFICATION OF THE GRAND JURY (App. C-2), which states that I am not criminally responsible for my actions of October 4, 1975, and, in light of my continued incarceration in a penal institution, and in light of my request for a CERTIFICATE OF REHABILITATION, I would like to be afforded my due process rights under the U.S. Constitution to confront my accusers and to compel witnesses on my behalf, in an effort to allow expression and ventilation of the emotions evoked by my actions of October 4, 1975, and by the actions of the officials of the State of Mississippi in continuing to punish me.

My main difficulty has been in having my pleas and petitions heard at all. Over two years ago, Justice Kay B. Cobb of the Supreme Court of Mississippi promised me a forum in which I could raise my issues (App. A-8); and I am yet to be afforded that opportunity by any court.

Additionally, after being withheld and suppressed by attorneys for the State of Mississippi in the court of original jurisdiction, a transcript of my parole revocation hearing (App. G-1) finally was handed over; and this evidence has been considered only at the appellate stage in the review of my case by the Supreme Court of Mississippi. I never have been given my due process rights in a court of law under the U.S. Constitution relative to this evidence, which proves my actual innocence.

Although any Justice of this Court need only issue the order, and I will go free, I believe you should see me in person, rather than knowing me only as a name on a piece of paper.

Statement Regarding Discretionary Review By This Court

I do not presume to approach this Court in a posture of entitlement or right. Under the U.S. Constitution I do have the privilege of the Writ of Habeas Corpus; and this privilege was denied to me by the Supreme Court of Mississippi (App. A-1). I trust that the Justices indeed are aware of the history of the numerous conflicting rulings by the Mississippi courts in this case (See pp. 26-27); and I am confident that you will exercise your authority in order to correct this indecisiveness and miscarriage. I state this because of my deep faith in the fairness and goodness of the U.S. judicial system.

Statement Regarding Positive Thinking

There is little doubt in anyone's mind that Parchman prison is a brutal and terrible place; and it always has been!

With the passage of the Mississippi Corrections Act of 1976, beginning in the 1970s and up until the early 1990s there was a window lasting approximately 15 years when widespread attitudes of officials at Parchman were humane towards prisoners. Although there are exceptions, at present, many staff members at Parchman are openly contemptuous and hostile toward prisoners.

Through the grace of Providence, I have trained my mind to view this tragedy in a positive way. I do want the Justices to know that I have suffered terribly for my transgressions. Twenty-seven years after the events of October 4, 1975, I continue to suffer. The 20 year old who was imprisoned on that day is now aged 47; and I would like to go home in order to build a new life with my wife.

EPILOGUE

When I first came to the Mississippi State Penitentiary at Parchman, I joined myself to the Director of the Parchman Band, Mr. Wendell B. Cannon, who was a longtime, powerful prison official. He offered me the opportunities to travel and to play music while incarcerated; and I served him. Parchman prison, in the late 1970s, was emerging from its similitude to a feudal state. Mr. Cannon was, in many ways, just like a feudal overlord.

I was a member of the Parchman Band for a total of 14 calendar years. During this time, I traveled extensively all over the State of Mississippi, with minimal supervision.

When I left the Parchman Band, I wrote an article about the group which was published in a national "blues" magazine based in Paris, France.

Mr. Cannon, who had been in declining health for many years, died in 1996.

My situation was so secure under Mr. Cannon that, when my father had my parole revoked, he felt comfortable in sending me back to prison. Daddy told me, when he sent me back to Parchman, that he was not trying to punish me.

In the early days of my imprisonment, I was seen and known as a model prisoner. Currently, I still am seen as a model prisoner; but I am known to assert and to maintain my rights through legal and administrative channels. In the 1990s, I emerged as a voice of honest dissent!

Benjamin Netanyahu, the former Prime Minister of Israel, recently told a group of Hillsdale College students that dissent is necessary in order for democracy to flourish.

Parchman prison, in both the past and present, has had many aspects of a totalitarian state.

When the Mississippi State Parole Board refused to give full-faith-and-credit to the opinion by the Supreme Court of Mississippi, published as *Alexander v. State*, 647 So. 2d 693 (Miss. 1994), I realized that I had to contend for my freedom. (App. I).

I have been privileged to witness, and to help bring-about the advent of the rule-of-law to Parchman prison. This "application for release," which had such humble beginnings, to my surprise, has made its way all the way to the Supreme Court of the United States.

One voice which has not been heard in this case is that of my father, the late James Peyton Alexander. Dad never did testify at my public trial before the second jury; never did make any public comments about my situation; never did answer any of the accusations made against him; never did testify at the wrongful death trial which followed; and never did file any brief in any court. Dad did testify at the Forrest County Justice Court hearing on the simple assault charges which he brought against me as a preventative measure in order to get me back into treatment, but there is no record of justice court proceedings in Mississippi.

After a bout with liver cancer, Daddy died in 1992; and, for a period of time, it appeared that his voice would forever remain silent about my fate.

Then, in 1994, in response to an order from the Supreme Court of Mississippi, a theretofore missing transcript of my parole revocation hearing (App. G-1) finally was handed-over during the appellate stage of the proceedings without explanation by the Staff Attorney at the Mississippi State Penitentiary at Parchman; and Daddy's voice, figuratively, was resurrected from the grave.

Here follows what my father said about his only son. This statement was not made in the press of a media feeding frenzy: it was a still, small voice uttered in an obscure board room on a remote plantation prison farm. This voice speaks more eloquently, perhaps, than any other:

> "Some people who are concerned about John, was the opinion that if his parole was revoked today, it would be final. . . . I'm going to be very brief that if some medical science should produce a drug that will alleviate this to demonstrate [sic], I would expect my son to [sic] a fair hearing as if this had not occurred, because he is not guilty of the simple act I charged him of spending the rest

> of his life in prison if he can cope in social and work world we all have to live in."

Appendix G-12.

On the basis of this transcript and the statements made therein by my father, the late James Peyton Alexander, I hereby request of the Supreme Court of the United States the fair hearing which Daddy expressed faith that I one day would receive.